

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C05050021

TO: Department of Enforcement
NASD

RE: American Express Financial Advisors Inc., Respondent
Broker-Dealer
[CRD No. 6363]

Pursuant to Rule 9216 of the NASD Code of Procedure, Respondents 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 the 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 legal proceedings in which the 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:

American Express Financial Advisors Inc. has been a member of NASD since November 17, 1972. During all periods mentioned herein, American Express Financial Advisors, Inc. was a registered broker-dealer and a member of NASD, which registration and membership remain currently in effect. During the past year, American Express Financial Advisors Inc. has been the subject of NASD disciplinary actions involving supervisory violations, including the following:

On November 30, 2004, the firm consented to a censure and a \$700,000 fine for failing to timely amend multiple Forms U-4 and U-5, and failing to supervise compliance with its reporting requirements.

On December 29, 2004, the firm consented to a censure and a \$20,000 fine for its failure to supervise a registered representative who engaged in unsuitable mutual fund switching.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under the 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 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

This matter involves various supervisory deficiencies and failures by both American Express Financial Advisors Inc. during the period July 2000 through August 2002 ('the relevant period'). The violations addressed in this AWC came to light as a result of NASD's investigation of the activities in an Office of Supervisory Jurisdiction (OSJ) of American Express Financial Advisors Inc. in Birmingham, Alabama.

The Birmingham OSJ was structured as a "Platform 2" office under which some registered representatives were independent contractors. The Managing Principal Representative (MPR) of the OSJ paid these registered representatives a salary from the commissions they generated from transactions effected under his advisor number.

Violations by American Express Financial Advisors Inc.

During the relevant period, American Express Financial Advisors Inc. failed to have adequate procedures in place to monitor whether the MPR performed certain supervisory reviews of the OSJ, or to identify and review transactions by individual registered representatives under the MPR's supervision.

In addition, during the relevant period the firm failed to reasonably ensure that the OSJ forwarded copies of Form 443 letters regarding mutual fund switches to the home office on a consistent basis, as required by its written supervisory procedures.

Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010(a) by American Express Financial Advisors Inc.

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

A censure and a monetary fine in the amount of \$25,000 against American Express Financial Advisors Inc.

In addition, within 30 days after the acceptance of this AWC, American Express Financial Advisors Inc. will provide NASD staff with a report attesting to and setting forth the details of its implementation of procedures correcting the deficiencies noted in this AWC.

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

III.

OTHER MATTERS

- A. 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 understand that if we are barred or suspended from association with any NASD member, we 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, we 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).

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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.

American Express Financial
Advisors Inc.

4/28/05
Date

Beth E. Weimer

By: Beth E. Weimer
Chief Compliance Officer

Reviewed by:

P. J. S.
Counsel for Respondents

Accepted by NASD:

Date

[Signature]
Senior Vice President and
Regional Director
DISTRICT DIRECTOR

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