

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C06050016

TO: Department of Enforcement
NASD

RE: Kyle Timothy Holland
Financial and Operations Principal
CRD No. 2308543

Pursuant to Rule 9216 of NASD Code of Procedure, I, Kyle Timothy Holland (or "Respondent") 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"), 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 positions in litigation 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:

Kyle Timothy Holland entered the securities industry in January 1993 as a General Securities Representative of a member of NASD. During all periods mentioned herein, he was registered as a Financial and Operations Principal with member firm First Avantus Securities. Holland is currently registered with another member of NASD. 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,

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, to the entry of the following findings by NASD:

1. During the period from October 2001 through August 2003, Kyle Timothy Holland was the Chief Financial Officer for member firm First Avantus Securities, Inc. (n/k/a Riverstone Wealth Management, Inc.).¹ As the firm's Chief Financial Officer, Holland was responsible for, among other things, the firm's financial books and records.

On or about October 1, 2001, a customer of First Avantus, namely Vista Bank Co. and its President, presented a check to the firm, in the amount of \$2,800,000, and requested that the funds be deposited into its account. The check, which contained the words "Cashier's Check," appeared to have been drawn against a domestic bank account but also indicated that Vista Bank maintained an office in Grenada, West Indies. As a fully disclosed introducing broker/dealer, First Avantus forwarded the customer's check to First Clearing Corporation, the clearing agent for First Avantus, for deposit and collection in the normal procedure utilized by First Clearing.²

During the period October 4 - 5, 2001, the customer effected a total of five withdrawals from his account, in the total amount of \$901,654, and wire transferred these funds to third parties. On October 5, 2001, and after the wire transfers had been effected, the customer's \$2,800,000 check was returned because one or more banks refused to pay. The customer never deposited additional funds into his account, and at the end of October 2001, the customer's account maintained an unsecured debit balance of \$835,537.

As a result of the aforementioned wire transfers and the bank's refusal to pay on the customer's \$2,800,000 check, a dispute arose between First Avantus and First Clearing concerning liability for the customer's unsecured debit balance. On or about November 19, 2001, First Avantus entered into a Settlement Agreement with First Clearing, whereby First Clearing agreed to take responsibility for the customer's *unsecured debit balance*. As part of the Settlement Agreement, the Clearing Agreement was amended such that First Avantus agreed to pay First Clearing \$500,000 in additional clearing fees payable in monthly installments over five years.

During the period from November 2001 through August 2003, Holland failed to ensure that First Avantus included the \$500,000 settlement amount with First Clearing as a liability of the firm. Moreover, during this period of time, First Avantus engaged in a securities business and because it did not include the entire \$500,000 settlement amount as a

¹ First Avantus is the subject of a separate NASD investigation.

² First Clearing is the subject of a separate NASD investigation.

liability, its net capital deficiency during this period ranged from \$222,000 to \$557,000.

During the period from about November 2001 through about August 2003, Holland also filed inaccurate FOCUS Reports with NASD because such reports significantly overstated the firm's net capital position. Moreover, during this same period, Holland failed to give NASD notice of First Avantus's net capital deficiencies.

Such acts, practices, and conduct constitute separate and distinct violations of Conduct Rule 2110 by Respondent Kyle Timothy Holland.

2. During the period from about November 2001 to about September 2002, Holland engaged in private securities transactions which consisted of selling a total of 75,000 shares of Gexa stock to four individuals. In connection with these sales he earned approximately \$6,000. Holland failed to give his member firm prior notice of his transactions involving Gexa stock, his role therein, and whether he might receive compensation in connection with the transactions.

Such acts, practices, and conduct constitute separate and distinct violations of Conduct Rules 2110 and 3040 by Respondent Kyle Timothy Holland.

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

A fine of \$25,000, and a suspension from association with any NASD member in all capacities for period of one month and in any principal capacity for a period of three months.

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

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 in the manner

described above 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 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.

4/29/05
Date

Kyle Timothy Holland
Kyle Timothy Holland

Reviewed by:

Counsel for Respondent

Accepted by NASD:

05/27/2005
Date

Virginia F. M. Jans
Virginia F. M. Jans
Associate Vice President and Director

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