

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C07050009

TO: Department of Enforcement
NASD

RE: Rafael Ernesto Avila, Respondent
General Securities Representative
CRD Nos. 4341162 and 2960672

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:

Rafael Ernesto Avila entered the securities industry in approximately April 1999. He was first registered as a general securities representative of an NASD member in November 2001. Avila was associated with NASD member Wallstreet Electronics, Inc. from about January 2001 to May 2003. Avila is not currently associated 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 separate 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:

During the period of approximately March 2001 to April 2003:

1. Respondent Avila received at least \$92,000 from four customers for investment purposes. Rather than invest the funds as directed by the customers, Respondent Avila converted the funds to his own use and benefit, in violation of NASD Conduct Rules 2330 and 2110.
2. Respondent Avila owned or maintained control over two brokerage accounts at an NASD member firm. Avila failed to disclose his association with Wallstreet Electronics, Inc. to the firm carrying the accounts, and failed to disclose the existence of the accounts to Wallstreet Electronics, Inc., in violation of NASD Conduct Rules 3050 and 2110.
3. Respondent Avila failed to provide prompt written notice to Wallstreet Electronics, Inc. that he was employed by, or received compensation from, an outside business activity, in violation of NASD Conduct Rules 3030 and 2110.

The foregoing acts, practices and conduct violate NASD Conduct Rules 2330, 3030, 3050, and 2110.

- 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.

OTHER MATTERS

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.


Rafael Enciso Avila

Counsel for Respondent

Date _____

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