

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C10050025

TO: Department of Enforcement
NASD

RE: James J. Mariani, General Securities Representative
(CRD No. 2932631)
Respondent

Pursuant to Rule 9216 of NASD Code of Procedure, James J. Mariani ("Mariani" or "Respondent") submits 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 Respondent alleging violations based on the same factual findings.

Respondent understands 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 Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary records;
 - 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. Respondent 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 Respondent's testimonial obligations or rights to take legal or factual

positions in litigation or other legal proceedings in which NASD is not a party.

Respondent also understands that his 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:

Mariani first became registered with NASD as a General Securities Representative on or about March 9, 1998, through an association with Continental Broker-Dealer Corp. (BD No. 14048) ("Continental"). Mariani's registration through Continental terminated on or about August 12, 1998. Thereafter, Mariani was registered with NASD as a General Securities Representative from on or about August 7, 1998 through January 2, 2002, through an association with Josephthal & Co., Inc. (BD No. 3227) ("Josephthal"), and from January 2, 2002 through May 3, 2004 through an association with Oppenheimer & Co., Inc. (BD No. 249) ("Oppenheimer").¹

On or about May 1, 2004, Mariani registered with NASD as a General Securities Representative his association with First Montauk Securities Corp. (BD No. 13755), where he is currently registered. Accordingly, he remains subject to NASD's jurisdiction pursuant to Article V, Section 4 of its By-Laws.

Mariani does not have any prior disciplinary history with the Securities and Exchange Commission, any state securities regulator, or self-regulatory organization.

1.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondent;
- 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, Respondent specifically and voluntarily waives 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

¹ Oppenheimer acquired Josephthal in or about January 2002.

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.

Respondent further specifically and voluntarily waives 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. Respondent hereby accepts and consents, 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:
1. From in or around July 2000 through September 2002, Mariani recommended and effected securities transactions on margin in the account of customer HB at Josephthal and Oppenheimer. Mariani did not have reasonable grounds for believing that these recommendations and transactions on margin were suitable for customer HB based upon her financial situation, investment objectives and needs. By reason of the foregoing, Mariani violated NASD Conduct Rules 2310 and 2110.
 2. From in or around July 2000 through September 2002, Mariani engaged in mutual fund switching in the account of customer HB at Josephthal and Oppenheimer. During that time period, he effectuated 17 purchases and 20 sales of mutual funds. Mariani did not have reasonable grounds for believing that these transactions were suitable for customer HB based upon her financial situation, investment objectives and needs. By reason of the foregoing, Mariani violated NASD Conduct Rules 2310 and 2110.
- B. Respondent also consents to the imposition, at a maximum, of the following sanctions:
- Mariani to be fined \$15,000 (which includes \$5,000 disgorgement)²; and
 - Mariani to be suspended from associating with any NASD member firm for a period of thirty (30) business days.

² Respondent to pay the fine by installment payment plan pursuant to a promissory note. A 15% initial deposit will be required with the balance of the fine to be paid, monthly and with interest, over four years. The interest charged will be prime (taken from the Wall Street Journal) plus three percentage points, determined on the date the installment plan is initiated.

The fine shall be due and payable either immediately upon reassociation with a member firm following the suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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

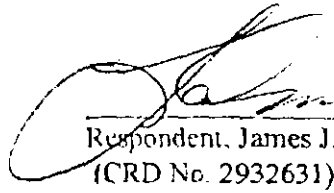
III.

OTHER MATTERS

- A. Respondent understands that he may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that he 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. Respondent agrees to pay any monetary sanctions imposed on Respondent upon notice that this AWC has been accepted and that such payments are due and payable upon reassociation with a member firm as noted above. Respondent has attached an Election of Payment form showing the method by which he proposes to pay any fine imposed.
- C. Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. Respondent understands that if he is barred or suspended from associating with any NASD member, he becomes 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, Respondent 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.)

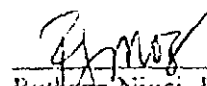
Respondent certifies that he has read and understand all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, have been made to induce Respondent to submit it.

3/11/05
Date


Respondent, James J. Mariani
(CRD No. 2932631)

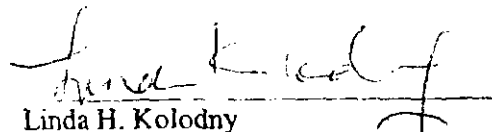
Reviewed by:

3/11/05
Date


Ruthann Niosi, Esq.
Counsel for Respondent

Accepted by NASD:

May 2, 2005
Date


Linda H. Kolodny
Senior Regional Attorney, District 10
Department of Enforcement

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