

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C8A050058

TO: Department of Enforcement
NASD

RE: David A. Noyes & Company
(CRD No. 205)
and
Anthony M. Quirini
Sales Supervisor
(CRD No. 369593)

Pursuant to Rule 9216 of NASD Code of Procedure, we, David A. Noyes & Company and Anthony M. Quirini (hereinafter collectively referred to as "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 Respondents alleging violations based on the same factual findings.

Respondents 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 Respondents; and,
3. If accepted:
 - a. this AWC will become part of Respondents 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 Respondents testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondents 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:

David A. Noyes ("Member") became a member of NASD in 1939, and became registered with the Securities and Exchange Commission ("SEC") in 1978. The Member conducts a general securities business on a fully disclosed basis. The Member's membership with NASD and registration with the SEC remain currently in effect. The Member has no recent history of disciplinary action by NASD.

Anthony M. Quirini ("Quirini") entered the securities industry in 1970 as a General Securities Representative of a former member of NASD. Quirini became registered as a Sales Supervisor of a former member of NASD in 1985. On September 8, 1994, Quirini became registered in such capacities with the Member, and remains registered with the Member in such capacities.

In September 1995, NASD accepted an Offer of Settlement from Quirini under which Quirini was found to have violated Article III, Sections 1 and 35 of NASD Rules of Fair Practice and Section 8 of the Government Securities Rules, in that Quirini: prepared and delivered to members of the public, sales literature that contained reports on the performance of stock that were exaggerated, unwarranted and misleading; and, made exaggerated, unwarranted or misleading statements about collateralized mortgage obligations and certificates of deposit or omitted to state material facts which in light of the context of the references to, and recommendations about the investments, would cause his statements to be misleading. Under the Decision and Order of Acceptance of the Offer of Settlement, Quirini was censured, fined \$2,500 and required to submit all of his advertising and sales literature to NASD Advertising Department for approval prior to use for a period of one year from the date of the decision accepting the Offer of Settlement.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondents 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, Respondents 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.

Respondents 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. Respondents 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:
 - 1. In May 2000, August 2000, November 2000, May 2001, November 2001, June 2002 and September 2002, Quirini prepared and distributed to about 2,500 members of the public, sales literature in the form of form letters ("Form Letters").

2. The Member's failure to file the Form Letters with NASD Advertising Regulation Department violated NASD Conduct Rules 2110 and 2210(l) by the Member. The May 2000, August 2000, May 2001, November 2001, June 2002 and September 2002 Form Letters included references to securities, which required that the Form Letters be filed with Advertising Regulation within ten days of use. The references included the following purchase recommendations:
 - a. tax-free unit investment trusts, such as Nuveen and First Trust municipal income trusts (May 2000 and, August 2000 Form Letters);
 - b. equity trusts, based on their positions in specific stocks (May 2000 and August 2000 Form Letters);
 - c. Nuveen Tax-Free Trust and First Trust Tax-Free Trust (May 2001 Form Letter);
 - d. First Trust Preferred Income Portfolio Trust and Municipal Closed End Portfolio (November 2001 Form Letter);
 - e. PIMCO Closed End Tax-Free Trust, Municipal Closed End Portfolio and Nuveen Quality Preferred Income Fund (June 2002 Form Letter); and,
 - f. Nuveen Quality Preferred Income Fund 2 (September 2002 Form Letter).
3. Quirini and the Member violated NASD Conduct Rules 2110 and 2210(d)(1)(B) when they created and distributed Form Letters which contained statements that Quirini could sell specific investments that provided "safety" and "security," because they were misleading, in that they exaggerated the safety of the products, and failed to reflect the risks of fluctuating prices and the uncertainty of rates of return and yield inherent in all investments. For example, all seven Form Letters contained language, which suggested that Quirini could provide specific investments that would provide "safety" and "security." Further, several included statements, which suggested, "everything will be ok." Such statements also included, but are not limited to, the following:
 - a. "Let us free you of your financial worries." (November 2000 and May 2001 Form Letters);
 - b. "I like the economy stocks that grow – and will continue to grow – for you, my clients." (May 2000 Form Letter);
 - c. "...I do feel very strongly that our careful stock selection, expert research techniques, and the Quirini Group's combined 57 years of managing investment portfolios will lead to above average returns for our clients in the future." (May 2000 and August 2000 Form Letters);

- d. "What a crazy stock market! ... Stay the course. This too will pass." (May 2000 Form Letter);
 - e. "This [First Trust Preferred Income Portfolio] is a 5-year Trust that offers safety, security and income and pays you monthly!" and "this [Municipal Closed End Portfolio] 5 year Trust is built to offer safety, security, and monthly income for you." (November 2001 Form Letter);
 - f. "... relax and calm down, everything will be O.K., trust me." (November 2001 Form Letter); and,
 - g. "... don't get discouraged with your stocks, and stock trusts. They will move up." (November 2001 Form Letter).
4. All seven Form Letters failed to provide balanced presentations of the risks and rewards of the products offered. For example, the May 2000 Form Letter listed five high yield preferred stocks based solely on their yields, but failed to provide disclosure of their related risks. These risks included potential fluctuations in share value and possible default, because payment of dividends was based upon the ability of the issuers to pay dividends. Another example is demonstrated in the June 2002 Form Letter, which recommended "variable rate funds" which "adjust their dividends with the underlying rates." The June 2002 Form Letter stated that, "if rates go up, your dividends go up." The June 2002 Form Letter made no reference to the alternative possibility, which is that if rates go down; the investors' dividends may go down. The Member and Quirini violated NASD Conduct Rules 2110, 2210(d)(1)(A) and 2210(d)(1)(D), when they failed to disclose this material information regarding the risks of each of the proposed investments.
5. The May 2000, August 2000, May 2001, June 2002 and September 2002 Form Letters, contained recommendations that readers consider replacing their funds in Certificates of Deposits ("CDs") and/or in money market mutual funds with other securities, such as corporate preferred stock, unit investments trusts, closed end funds and other securities. However, these Form Letters failed to disclose the differences in guarantees, fluctuation of principal and/or return, insurance, liquidity and other investment characteristics, which had to be explained in order to make comparisons between such varying products complete and balanced. For example, CDs and bank money markets are guaranteed, where the investment return and principal value of the alternatives offered fluctuate with changes in market conditions. The Member and Quirini, by creating and distributing these form letters: violated NASD Conduct Rules 2110 and 2210(d)(2)(M) because the letters failed to provide such information; and violated NASD Conduct Rules 2110 and 2210(d)(1)(A) because these form letters failed to provide a sound basis for evaluating the recommendations contained in the letters.

6. The May 2000, August 2000, May 2001, November 2001 and June 2002 Form Letters cited yields and returns without providing adequate information for evaluating them. For example, they often do not state whether the yield was in fact a yield to maturity, or a current yield. Further, it was sometimes unclear what period the yield or return covered. The Member and Quirini violated NASD Conduct Rules 2110 and 2210(d)(1)(A), when they made such citation. Some examples of these citations include, but are not limited to, the following:
- a. May 2000 Form Letter:
 - i. "Alberta Energy – 9.50% yields;"
 - ii. "Delta Airlines – 8 1/8% yields;" and,
 - iii. "...investments pay around 6-1/2% to 6 3/4% tax-free"
 - b. August 2000 Form Letter:
 - i. "Bank One – 8 1/2% yield;"
 - ii. Texas Utilities Europe – 9 3/4% yield;" and,
 - iii. "...investments pay around 6-1/2% to 6 3/4% tax-free."
 - c. May 2001 Form Letter:
 - i. "Bank One – 8 1/2% yield;"
 - ii. "Canadian Occidental Petroleum 8.34% yield;"
 - iii. "Commonwealth Edison Finance – 8.48% yield;" and,
 - iv. "Texas Utilities Europe – 9 3/4% yield."
 - d. November 2001 Form Letter:
 - i. "It [First Trust Preferred Income Portfolio Trust] ... has a 7.70% yield;" and,
 - ii. "It [the Municipal Closed End Portfolio] ... yields 6%."
 - e. June 2002 Form Letter:
 - i. "the yield is expected to be over 6% ...;" and,
 - ii. "monthly income between 8 and 8 1/2%."
7. The September 2002 Form Letter promoted the Nuveen Preferred Income Fund 2, based on the performance of the original Preferred Income Fund, when it stated that it "was an astounding success," and that "the offering price was \$15 per share, with an 8 1/4% dividend, and is now trading ... at \$15.40." By making this statement, the Member and Quirini violated NASD Conduct Rules 2110 and 2210(d)(1)(B), because the statement was highly misleading in that it implied that investors will receive similar results from the purchase of the new fund.
8. In small type, at the end of the August 2000, November 2000, May 2001, November 2001, June 2002 and September 2002 Form Letters, there appeared a disclaimer footnote suggesting that the Form Letter is not to be viewed as solicitation to buy or sell securities. This footnote was not

that prospectus carefully before investing, as required under SEC Rule 482(a)(3).

11. In connection with the violations noted in paragraphs 2 through 12 above, from at least in or about May 2000 to in or about September 2002, the Member failed to adequately and properly supervise the use of these Form Letters, in that the Member permitted the distribution of the improper Form Letters, in violation of NASD Conduct Rules 2110 and 3010 by the Member.
 12. From approximately May 2000 until approximately September 2002, the Member violated NASD Rules 2110 and 3010(b) by failing to establish, maintain and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws and regulations, in that the Member failed to establish adequate procedures for detailing how sales literature and advertisements should be reviewed by the Member's Branch Office Managers and which items would be required to be submitted to NASD Advertising Regulation for approval prior to use.
- B. Respondents also consent to the imposition, at a maximum, of the following sanctions:
1. Censure of the Member;
 2. A joint and several fine of \$10,000 against the Member and Quirini;
 3. Quirini will be suspended from association with any member of NASD in any capacity for ten (10) business days; and,
 4. A separate \$30,000 fine against the Member, and a "pre-use" filing requirement that for one (1) year from the acceptance of this AWC, in that the Member will obtain an NASD Advertising Regulation Department staff "no objection" letter on any proposed sales literature or advertising prior to its use during this time period.

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

III.

OTHER MATTERS

- A. Respondents 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. Respondents also 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. Respondents agree to pay any monetary sanctions imposed on us upon notice that this AWC has been accepted and that such payments are due and payable and have attached Election of Payment forms showing the method by which we propose to pay any fine imposed.
- C. Respondents 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.

Respondents 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.

David A. Noyes & Company

May 18, 2005
Date

Paul E. Murin
By PAUL E. MURIN
Its Pres.

5/19/2005
Date

Anthony M. Quirini
Anthony M. Quirini
Sales Supervisor

Reviewed by:

Robert L. Lang
Counsel for Respondents

Accepted by NASD:

June 23, 2005
Date

Carlotta A. Romano
Carlotta A. Romano
Senior Vice President and Regional Director
Signed on behalf of the Director of ODA, by
delegated authority