

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C9A 050005

TO: Department of Enforcement
NASD

RE: Mark E. McCaffrey, Respondent
General Securities Representative
CRD No. 1811502

Pursuant to Rule 9216 of the NASD Code of Procedure, Mark E. McCaffrey ("McCaffrey") 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 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, National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs 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 the 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 in which the NASD is not a party.

I also understand that my experience in the securities industry and disciplinary history may be factors which will be considered in deciding whether to accept this AWC. That experience and history are as follows:

McCaffrey first became registered with NASD in March 1990 as a General Securities Representative with an NASD member. He was registered with Bank of America Investment Services, Inc. ("BAIS") as a General Securities Representative from March 2003 to August 6, 2004. He has not been registered with any NASD member since August 6, 2004. McCaffrey 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 prejudice 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 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 June 2003, McCaffrey received a check for \$500,000 from an investor for investment in an instrument having a one year term. McCaffrey deposited the check to a personal bank account and used the funds for his own benefit.

Based on the foregoing, McCaffrey violated NASD Conduct Rule 2110.

2. By letters dated September 20, 2004, November 5, 2004 and November 18, 2004, NASD requested, pursuant to NASD Procedural Rule 8210, information from McCaffrey concerning the matters set forth in paragraph 1 above. The letters requested a response by, respectively, October 4, November 15 and December 1, 2004. McCaffrey failed to respond to the first two letters by the dates his respective responses were due. On about November 18, 2004, he advised NASD, through counsel, that he did not intend to provide NASD any information.

Based on the foregoing, McCaffrey violated NASD Procedural Rule 8210 and Conduct Rule 2110.

B. I also consent to the imposition, at a maximum, of the sanction of a bar from association with any NASD member.

Pursuant to IM-8310-2(f), the bar imposed herein shall become effective upon approval or acceptance of this AWC by the NAC.

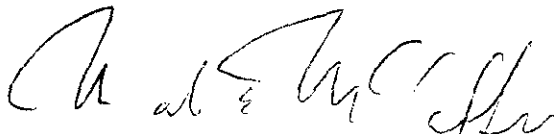
III.

OTHER MATTERS

A. I understand that if I am barred 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. (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.

1/27/05
Date



Mark E. McCaffrey

Reviewed by:



Michael D. Wolk, Esq.
Counsel for Mark E. McCaffrey

Accepted by NASD

February 8, 2005
Date



John P. Nocella
Senior Vice President and District Director
Signed on behalf of the Director of ODA, by
delegated authority