

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C9A050019

TO: Department of Enforcement
NASD

RE: Thomas R. Femister, Respondent
General Securities Representative
CRD No. 2783803

Pursuant to Rule 9216 of the NASD Code of Procedure, Thomas R. Femister ("Femister") 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:

Femister first became registered in October 1996 as a General Securities Representative with an NASD member. He was registered in that capacity with The Investment Center, Inc. ("TIC") from November 2, 2000 to December 20, 2002. On January 2, 2004, Horner Townsend & Kent, Inc. ("HTK") submitted a Form U4 to NASD by which Femister sought to become registered with HTK as a General Securities Representative. Femister was registered with HTK in that capacity from February 3, 2004 to December 15, 2004. He has not been associated with any member since December 15, 2004. Femister 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 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 or about early January 2002, MS authorized Femister to transfer funds from her Individual Retirement Account ("IRA") at TIC, for which Femister served as the account representative, to Central Carolina Bank of Durham ("CCB") for the purpose of purchasing a certificate of deposit for her. On January 7, 2002, Femister caused approximately \$76,971 to be transferred by wire from MS's IRA at TIC to a bank account at CCB that Femister owned, account number [REDACTED]. MS had no knowledge that Femister transferred her funds to an account he owned and MS did not authorize him to do so. For a substantial time after the transfer occurred, MS understood and believed Femister had purchased a certificate deposit in her name with the full amount of the funds or had otherwise invested the funds for her benefit. Femister did not invest or apply all of MS's funds for her benefit but converted at least a portion of MS' funds to his own use and benefit.

Based on the foregoing, Femister violated NASD Conduct Rules 2330(a) and 2110.

2. On about January 30, 2004, at which time Femister had an application for registration pending with HTK, Femister provided HTK a copy of a fictitious document that MS had purportedly signed and that Femister claimed had been filed in the District Court of Maryland for Prince Georges County. The document stated, in substance, that MS retracted certain statements she had previously made about Femister. On about February 11, 2004, Femister provided HTK a copy of a fictitious letter addressed to TIC dated May 3, 2003 that MS had purportedly written, signed and sent to TIC. The letter stated MS wanted to withdraw her complaint against Femister. When he provided the documents to HTK, Femister knew they were fictitious, knew MS's purported signatures on them were not genuine and knew their respective contents were false.

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

3. By letters sent to Femister dated June 16, 2004, September 10 2004 and November 3, 2004, NASD requested, pursuant to NASD Rule 8210, information in writing from him concerning, among other things, the funds that were transferred from MS's IRA at TIC to the bank account Femister owned at CCB on January 7, 2002. The letters specifically requested Femister to provide a complete accounting of the use and disposition of the entire amount transferred to the account he owned and to provide copies of all documents reflecting or evidencing any use and/or disposition of any part of the funds. Femister failed to provide NASD an accounting of the use and disposition of MS's funds as requested, failed to provide NASD any documents evidencing or reflecting the use and

disposition of MS's funds, and failed to provide other information that NASD requested from him.

Based on the foregoing, Fernister 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.

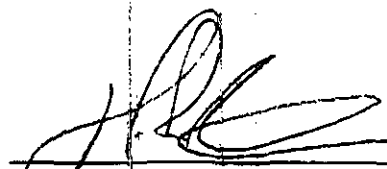
III.

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).

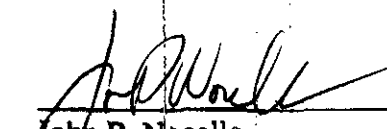
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce me to submit it.

4/20/2005
Date


Thomas R. Fernister

Accepted by NASD

May 3, 2005
Date


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