

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C9A 050023

TO: Department of Enforcement
NASD

RE: Brian J. Newmark, Respondent
General Securities Representative
CRD No. 2687942

Pursuant to Rule 9216 of the NASD Code of Procedure, Brian J. Newmark ("Newmark") 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:

Newmark first became registered with NASD in December 1995 as a General Securities Representative. He was registered with Ameritas Investment Corp. ("Ameritas") as a General Securities Representative from November 2000 to May 14, 2004. He has not been registered with any NASD member since May 14, 2004. Newmark 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:

From about June 2001 to about January 2002, Newmark, through an entity he owned and controlled, engaged in a business activity for compensation outside the scope of his relationship with Ameritas without providing Ameritas prompt written notice of the activity. The business activity constituted the sale of four charitable gift annuities in the total amount of about \$3.65 million. Newmark received commissions totaling about \$150,000 as a result of the activity.

Based on the foregoing, Newmark violated NASD Conduct Rules 3030 and 2110.

- B. I also consent to the imposition, at a maximum, of the sanctions of a \$150,000 fine and a nine-month suspension from association with any NASD member.

The fine shall be due and payable either immediately upon re-association with a member firm following the nine-month 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 suspension imposed herein shall become effective on a date set by NASD's staff.

III.

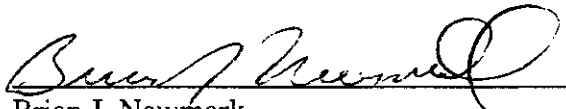
OTHER MATTERS

- A. I understand that I may attach a Corrective Action Statement to this AWC which is a statement of demonstrable corrective steps taken to prevent future misconduct. I further understand that I 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. I agree to pay any monetary sanction imposed on me upon re-entry as noted above.
- C. I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

- D. I understand that if I am suspended 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 suspension. (See NASD Rule 8310 and IM-8310-1).

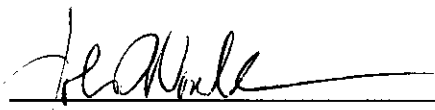
I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce me to submit it.

4-6-05
Date


Brian J. Newmark

Accepted by NASD

May 9, 2006
Date


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

To: NASD
From: Brian J. Newmark
Re: E9A040312

Statement of Corrective Action:

Upon receipt of a Compliance Alert from my broker dealer in April 2003, I stopped all of my insurance agents from marketing or selling charitable gift annuities. These products have not been offered for sale and have not been sold by my agents since that time.

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by the NASD, nor does it reflect the views of NASD, or its staff.

Respectfully,

A handwritten signature in black ink, appearing to read "Brian J. Newmark", with a stylized flourish at the end.

Brian J. Newmark