

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. C9B050036

TO: Department of Enforcement
NASD

RE: **A. Gary Shilling & Co., Inc.**
BD No. 7666

Albert Gary Shilling
CRD No. 422125

Pursuant to Rule 9216 of the NASD Code of Procedure, A. Gary Shilling & Co., Inc. ("Shilling & Co.") and Albert Gary Shilling ("Shilling") (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 us alleging violations based on the same factual findings.

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

We 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:

Shilling & Co. became an NASD member in 1978. The firm employs approximately three (3) registered persons and derives the majority of its revenue from its soft dollar business, which entails providing investment advisory and economic consulting services to clients. The firm does not maintain any retail accounts, nor solicit securities; however it does handle a small number of accounts on a discretionary basis. The firm has not previously been the subject of any relevant disciplinary action.

Shilling became registered with NASD as a General Securities Principal in or about November 1972. He also holds Series 3, 41 and 63 licenses. Shilling has been President of Shilling & Co. since inception, and has not previously been the subject of any relevant disciplinary action.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under the 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 United States Securities and Exchange Commission and a United States Court of Appeals.

Further, we 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.

We specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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

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:

Background

Shilling is an economist who writes a monthly economic newsletter for Shilling & Co., entitled, "A. Gary Shilling's INSIGHT." The newsletter is mailed to approximately 450 subscribers.

From in or about February 2003 through in or about September 2003 (the "relevant period"), Shilling's newsletters contained a section entitled "themes" in which he would highlight certain economic sectors or industries (such as conventional home builders, property & casualty insurance, etc.) and provide a "buy" or "sell" recommendation for each sector. Furthermore, under each theme category he would list "Investment Vehicles," which were selected stocks associated with the highlighted line of business. For each stock recommended, Shilling included price and P/E information, five-year growth projections and other detailed information.

During the relevant period, Shilling's newsletters were "research reports" as defined by NASD Conduct Rule 2711(a)(8).

Violations of the Research Analyst Rule

- 1) During the relevant period, Shilling purchased and sold securities in a manner inconsistent with recommendations made in his research reports on forty (40) separate occasions. As a result of this conduct, Shilling violated NASD Conduct Rules 2711(g)(3) and 2110.
- 2) Shilling's July 2003 newsletter provided a "sell" recommendation for the common stock of certain insurance companies. Under NASD Conduct Rule 2711(g), those securities were subject to a 30-day trading restriction for the period prior to the publication of the report. Nevertheless, on or about June 25, 2003, Shilling sold his common stock shares in two of these insurance companies. There were a total of four sales made in a Shilling' personal account and in an account in which he exercised discretion. As a result of this conduct, Shilling violated NASD Conduct Rules 2711(g)(2) and 2110.
- 3) For nine of the securities with "buy" recommendations during the relevant period, the research reports failed to provide distribution of ratings and price chart information. As a result of this conduct, Shilling & Co. and Shilling violated NASD Conduct Rules 2711(h)(5), 2711(h)(6) and 2110.
- 4) During the relevant period, Shilling & Co., acting through Shilling, failed to adopt and implement any written supervisory procedures reasonably designed to ensure compliance with Conduct Rule 2711. As a result of this conduct, Shilling & Co. and Shilling violated NASD Conduct Rules 2711(i) and 2110.

SANCTIONS

We also consent to the imposition, at a maximum, of the following sanctions:

Shilling &. Co. and Shilling shall be censured and fined \$15,000 joint and several; and

Shilling shall be fined an additional \$15,000.

III.

OTHER MATTERS

A. We 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. We 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. We 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 an Election of Payment form showing the method by which we propose to pay any fine imposed.

C. We 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.

We 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, have been made to induce us to submit it.

4/29/05
Date

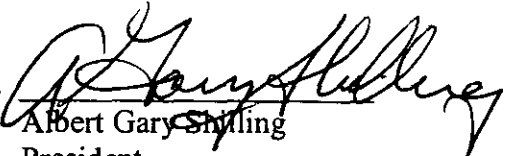
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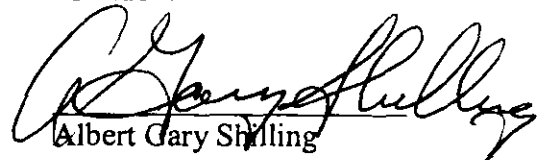
Accepted by NASD:

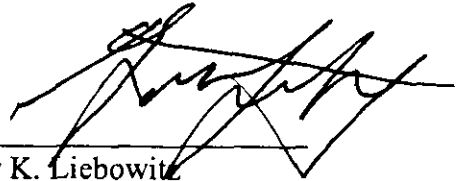
Date

A. Gary Shilling & Co., Inc.

By:


Albert Gary Shilling
President


Albert Gary Shilling



Gary K. Liebowitz
Senior Vice President and
District Director
Signed on behalf of the Director of
ODA, by delegated authority.