

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CE1050007

RE: H.D. Vest Investment Services, Respondent
Member Firm
(BD No. 13686)

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondent H.D. Vest Investment Services 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 it alleging violations based on the same factual findings.

Respondent understands 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 it; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary records and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary records;
 - 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. Respondent 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 Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceeding in which NASD is not a party.

Respondent also understands that its experience in the securities industry and disciplinary history may be factors that NASD will consider in deciding whether to accept this AWC. That experience and history are as follows:

H.D. Vest Investment Services is a full-service broker-dealer and has been an NASD member since 1983.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- 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 ("SEC") and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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. Findings

Respondent hereby accepts and consents 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. This matter involves violations of NASD Rule 2830(k). NASD Rule 2830(k)(1) prohibits member firms from favoring or disfavoring the sale or distribution of mutual fund shares on the basis of brokerage commissions received by the firm. NASD Rule 2830(k)(3) prohibits member firms from arranging for a specific amount or percentage of brokerage commissions to be directed to the firm conditioned on the firm's sale of mutual fund shares. NASD Rule 2830(k)(6) prohibits member firms from recommending the purchase of mutual fund shares on the basis of brokerage commissions received or expected to be received by the firm from any source.
2. From January 1, 2001 through December 31, 2003 (the "Relevant Period"), H.D. Vest Investment Services ("Vest" or the "Firm") maintained a revenue sharing program in which participating mutual fund families paid a fee in return for preferential marketing and distribution access, including enhanced access to the firm's sales force and hyperlinks to those funds' websites on the firm's internal website. Ten mutual fund families participated in Vest's Level One Sponsors revenue sharing program.¹
3. During the Relevant Period, seven of the ten mutual fund families in Vest's Level One Sponsors program paid all or part of their fees by directing approximately \$12,967,481 in brokerage commissions to Vest. When it arranged for and accepted those commission payments, Vest violated NASD Conduct Rules 2830(k) and 2110.
4. During the Relevant Period, Vest violated the requirements of NASD Conduct Rule 2830(l) when it entered into or accepted reimbursement in connection with non-cash compensation arrangements with its associated persons that did not award equally weighted credit for sales of investment company securities.
5. During the Relevant Period, Vest violated the record keeping requirements of NASD Rule 2830(l)(3) when it failed to make and keep records of compensation received by Vest and its associated persons from offerors.

¹ The ten Level One Sponsors were AJM, John Hancock, Lincoln Financial/Delaware (LFD), MFS, Oppenheimer, Phoenix, Putnam, Scudder, Van Kampen, and Wells Fargo.

6. During the Relevant Period, Vest violated NASD Conduct Rules 3010 and 2110 when it failed to establish and maintain a system and procedures reasonably designed to detect and prevent violations of NASD rules relating to cash and non-cash compensation in connection with the sale of investment company securities.

Vest's Level One Program

7. Vest maintained a revenue sharing program called the Level One program. In return for revenue sharing payments, Vest provided Level One Sponsors with enhanced access to the firm's sales force and hyperlinks to those funds' websites on the firm's internal website.
8. Level One Sponsors received the following benefits, among others:
 - exposure on Vest's intranet and internet systems, with product information and hyperlinks to the funds' websites, and access to the order execution infrastructure;
 - opportunities to advertise directly to Vest's advisors;
 - opportunities to participate in training meetings for Vest's advisors;
 - regularly updated lists of Vest's advisors;
 - regular meetings with and access to Vest's sales, management, and advisor support teams;
 - transaction cost waivers for certain accounts, subject to sponsor reimbursement; and
 - conference calls with Vest's marketing department, including a review of monthly invoices, updates on sales campaigns, corporate updates, and competitive summaries.

The foregoing were not available or, in some cases, as fully available, to non-participating mutual fund families.

Vest sold mutual funds offered by approximately 300 mutual fund families, but included only 10 fund families in its Level One Sponsors program.

Vest's Level One Sponsors Fees

9. All of the Level One Sponsors paid revenue sharing fees based on a percentage of assets held and/or sales executed by Vest.

10. Vest negotiated the terms of the fee formulas with each Level One Sponsor, except Wells Fargo proprietary funds. The rates ranged from 5.5 to 15 basis points on assets under management and from 20 to 35 basis points on sales.
11. Wells Fargo proprietary funds did not pay a negotiated rate of revenue sharing fees. Instead, the investment adviser to the Wells Fargo proprietary mutual funds allocated revenue net of certain expenses to various Wells Fargo & Company affiliates, including Vest, based on their sales of the Wells Fargo proprietary mutual funds.
12. Vest agreed to accept revenue sharing fees from seven Level One Sponsors through directed brokerage.

Vest's Receipt of Directed Brokerage

13. During the Relevant Period, seven Level One Sponsors, AIM, John Hancock, LFD, MFS, Oppenheimer, Putnam, and Scudder, paid Vest \$12,967,481 in revenue sharing payments by directing brokerage commissions for portfolio transactions to or for the benefit of Vest.
14. Mutual fund advisors generally use a variety of unaffiliated broker-dealers with institutional trading facilities to execute transactions in the portfolios of the mutual funds they distribute and manage. The selection of executing brokers is generally within the discretion of the mutual fund family advisor, subject to the requirement of obtaining best execution.
15. During the Relevant Period, the seven Level One Sponsors that paid all or part of their required revenue sharing fees by directing brokerage commissions for portfolio transactions to or for the benefit of Vest avoided using their own assets to pay the fees and instead used brokerage commissions, which are assets of the mutual funds.
16. Vest did not have a trading desk capable of executing large institutional orders. Accordingly, Level One Sponsors paid fees through directed brokerage by using either a third-party broker-dealer or a Vest affiliate "step out" arrangement.
17. Starting in 2001 and continuing through the Relevant Period, Vest arranged for a third party broker-dealer to execute fund portfolio transactions for the Level One Sponsors, and pay the commission (less a service fee) to Vest even though Vest provided no services in connection with the trade.
18. Typically the Level One Sponsors paid revenue sharing fees with brokerage commissions at a rate of approximately \$1.20 - \$1.30 in commissions for each dollar of fees owed to Vest. Vest credited the brokerage commissions it

received from the third party against the Level One Sponsor's revenue sharing fee obligations.

19. Starting in 2002 and continuing through the Relevant Period, Vest made a similar step out arrangement with a Wells Fargo affiliate, and the Level One Sponsors. The Level One Sponsors directed the Wells Fargo affiliate to apply the commission for a specific portfolio transaction toward revenue sharing fees owed to Vest. The Wells Fargo affiliate deducted and retained a portion of the brokerage commission for its trade execution and overhead expenses, and paid the remainder to Vest, even though Vest provided no services in connection with the trade. Vest credited the brokerage commissions it received from the Wells Fargo affiliate against the Level One Sponsor's revenue sharing fee obligations.
20. During the Relevant Period, Vest tracked cash payments and the directed brokerage commissions it received from each Level One Sponsor and provided that information in monthly invoices to each Level One Sponsor.

Non-Cash Compensation Arrangements

21. During the Relevant Period, Respondent had two programs entitled "Vest Guest" and "Chapter Directors" that reimbursed registered representatives for expenses incurred in connection with certain Firm training and education conferences (the National Conference and VestFest). Each program reimbursed registered representatives based, at least in part, on sales production that did not equally weigh sales of investment company securities.
22. Vest Guest: Each year during the Relevant Period, Respondent selected the top 75 over-all producers, and the top 20 producers in each of the Level One Sponsors' funds to participate in the Vest Guest program. Vest selected the top 20 Level One producers from lists prepared by the Level One Sponsors. In each year of the Relevant Period, at least 85 to 125 registered representatives met the eligibility criteria by being a top 20 producer for one or more of the Level One Sponsor fund families. Vest sent representatives who were selected as Vest Guests personal invitations that disclosed its unequally weighted sales criterion.
23. During the Relevant Period, Respondent reimbursed certain travel and lodging expenses for Vest Guests at the National Conference. The Firm paid over \$250,000 in non-cash compensation for the expenses of Vest Guests. The Firm paid over \$150,000 in non-cash compensation for the expenses of Vest Guests who were eligible for the program based on their production of Level One Sponsor funds.

24. Level One Sponsors contributed over \$100,000 to the Vest Guest program in 2001, but did not contribute to the Vest Guest program during the remainder of the Relevant Period.
25. Chapter Directors: Respondent organizes its representatives into approximately 115 Chapters nationwide. Each Chapter has one Chapter Director and approximately 40 members. During the Relevant Period, Vest's criteria for becoming a Chapter Director included a requirement that registered representatives place 90% of their new business with Level One Sponsors. Vest told its registered representatives this was a criteria for selection as a Chapter Director. The new business requirement did not weigh sales of investment securities equally.
26. Vest waived the conference registration fees for two conferences (the National Conference and VestFest) for its Chapter Directors.

Record Keeping Violations

27. During the Relevant Period, Vest had over 5300 registered representatives. Vest permitted its registered representatives to attend 65 training and education meetings held by investment companies that reimbursed over \$135,000 for expenses in connection with those training and education events. In addition, during the Relevant Period, investment companies reimbursed the Vest representatives on 77 occasions for a total of over \$38,000 in marketing expenses incurred by its registered representatives.
28. Vest did not make and keep adequate records of cash payments made by offerors and failed to document when, and if, payments were made directly to vendors for registered representatives' marketing expenses.
29. During the Relevant Period, Vest failed to maintain records of compensation received by the Firm and its associated persons from offerors that contained the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received for all cash and non-cash compensation that it or its associated persons received from offerors.

Vest's Supervisory System and Procedures

30. During the Relevant Period, Vest did not establish and maintain a system to supervise the activities of its registered representatives and associated persons reasonably designed to ensure compliance with NASD Conduct Rule 2830.
31. Vest did not make or enforce supervisory procedures to ensure that the firm made and kept records of cash and non-cash compensation required by NASD Conduct Rule 2830(1)(3).

32. Vest did not make or enforce supervisory procedures to ensure that the firm's non-cash compensation arrangements equally weighted credit for sales of investment company securities.
33. Vest required its Level One Sponsors to provide marketing assistance and materials to the Firm's registered representatives. Vest encouraged its representatives to ask Level One Sponsors for marketing assistance, including help with and financial contributions to client presentations and cooperative marketing events, including client workshops and seminars. Vest did not prohibit representatives from accepting goods and services from third party vendors that had been paid for by the mutual fund families. Vest's supervisory systems and procedures did not require that all payments by offerors for marketing expenses be made through the firm.
34. Vest did not make or enforce supervisory procedures to ensure that its associated persons did not accept compensation from offerors through reimbursement of marketing expenses to third-party vendors.
35. During the Relevant Period, Vest did not have any written supervisory procedures designed to address the requirements of NASD Conduct Rule 2830(l). Vest's Compliance Manual summarized the requirements of NASD Conduct Rule 2830(l) but did not contain any written supervisory procedures designed to address compliance with the rule. The Manual did not identify the persons responsible for supervision with respect to the rules, describe steps for supervisory review, prescribe how often the supervisor should take any steps, or specify how the supervisor should document his review.

Resulting Rule Violations

Directed Brokerage

36. Conduct Rule 2830(k) is designed to prevent arrangements in which brokerage commissions, which are fund assets, are used to compensate member firms for selling fund shares. The rule is also designed to ensure that execution of portfolio transactions by brokerage firms is guided by the principle of "best execution" and not by other considerations.² The rule provides, in pertinent part:

(1) No member shall, directly or indirectly, favor or disfavor the sale or distribution of shares of any particular investment company or group of investment companies on the basis of brokerage commissions received or expected by such member from any

² Proposed Rule Change, file SR-NASD-2004-027, 2004 SEC LEXIS 2488 (Oct. 29, 2004); *Notice to Members* 84-40

source, including such investment company, or any covered account.

* * *

(3) No member shall ... request or arrange for the direction to any member of a specific amount or percentage of brokerage commissions conditioned upon that member's sale or promise of sales of shares of an investment company.

* * *

(6) No member shall, ... (B) recommend specific investment companies to sales personnel, or establish "recommended," "selected," or "preferred" lists of investment companies..., if such companies are recommended or selected on the basis of brokerage commissions received or expected from any source ...

37. As described above, during the Relevant Period, Vest arranged for and accepted approximately \$12,967,481 in directed brokerage commissions from mutual fund families as payment for participation in its Level One Sponsors program. These mutual fund families received a number of benefits by participating in the programs, including preferential marketing and distribution access, including enhanced access to the firm's sales force and hyperlinks to those funds' websites on the firm's internal website. By arranging for and accepting brokerage commissions to pay for the fund families' participation in the programs, Respondent violated NASD Conduct Rules 2830(k) and 2110.

Non Cash Compensation Arrangements

38. NASD Conduct Rule 2830(l)(1), subject to a limited exception that does not apply to these facts, prohibits associated persons from accepting any compensation from anyone other than the member with which the person is associated in connection with the sale or distribution of investment company securities.
39. NASD Conduct Rule 2830(l)(5) generally prohibits members and their associated persons from directly or indirectly accepting or making payments or offers of payments of non-cash compensation in connection with the sale of investment company securities, subject to certain exceptions. One such exception permits a member to enter into non-cash compensation arrangements with its associated persons, but only if the arrangement is based on the total production of associated persons with respect to all investment company securities distributed by the firm. Further, the arrangement must require that credit for each investment company security sold be equally weighted. Rule 2830(l)(5)(E) also permits non-member companies, such as investment company affiliates, to contribute to a firm's non-cash

compensation arrangements with its associated persons, but only if the arrangement meets the requirements outlined above. The rule provides, in pertinent part:

No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Notwithstanding the provisions of subparagraph (I)(1), the following non-cash compensation arrangements are permitted:

* * *

(D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

- (i) the member's or non-member's non-cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;
- (ii) the non-cash compensation arrangement requires that the credit received for each investment company security is equally weighted;
- (iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and
- (iv) the record keeping requirement in paragraph (I)(3) is satisfied

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (I)(5)(D).

40. As described above, during the Relevant Period, Vest made non-cash compensation payments to its associated persons in connection with its National Conference and Vest Fest training and education events. Vest based

eligibility for the payments on production of investment company securities, but did not credit sales of investment company securities equally. These payments did not meet the requirements of NASD Conduct Rule 2830(l)(5)(D). In so doing, Vest violated the requirements of NASD Conduct Rules 2830(l)(5) and 2110.

41. In 2001, Vest accepted contributions from its Level One Sponsors for reimbursements to Vest Guests in connection with the National Conference. The payments from Vest to its associated persons did not meet the requirements of NASD Conduct Rule 2830(l)(5)(D), and thus the contributions from the Level One Sponsors to Vest did not meet the requirements of NASD Conduct Rule 2830(l)(5)(E). In accepting these contributions from the Level One Sponsors, Vest violated the requirements of NASD Conduct Rules 2830(l)(5) and 2110.

Record Keeping

42. NASD Rule 2830(l)(3) requires member firms to keep records of compensation received by the member or its associated persons from offerors of investment company securities. The rule requires the records to include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.
43. As described above, during the Relevant Period, Vest failed to keep adequate records of the compensation received by the member or its associated persons from offerors of investment company securities. In so doing, Vest violated NASD Conduct Rules 2830(l)(3) and 2110.

Supervision

44. NASD Rule 3010 requires member firms to establish, maintain and enforce a supervisory system and procedures that are reasonably designed to achieve compliance with applicable federal securities laws and NASD Rules.
45. During the Relevant Period, Respondent failed to establish and maintain a system and procedures reasonably designed to achieve compliance with the requirements of NASD Rule 2830(l). In so doing, Respondent violated NASD Conduct Rules 3010 and 2110.

B. Sanctions

H.D. Vest Investment Services hereby accepts and consents to the following sanctions:

1. A censure; and
2. A fine of \$4.015 million.

3. No later than 90 days after notice of acceptance of this AWC, a registered principal of Respondent shall certify in writing to NASD that Respondent has reviewed its systems and procedures for complying with NASD Conduct Rule 2830(l) and has established systems and procedures reasonably designed to achieve compliance with the provisions of the rule.

III.

OTHER MATTERS

- A. Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understand that it 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. Respondent agrees to pay any monetary sanctions imposed on it pursuant to the terms of this AWC 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 it proposes to pay any fine imposed.
- C. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

05/23/2025 16:31 9728706500

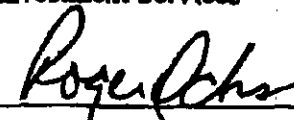
PAGE 02/04

The undersigned certify on behalf of Respondent that they 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 them to submit it.

H.D. Vest Investment Services

5-23-05
Date

By:



Name:

Robert C. Ochs

Title:

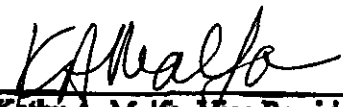
PRESIDENT & CEO

Reviewed by:

Counsel for Firm

Accepted by NASD:

4/8/05
Date


Kathy A. Malfa, Vice President
Department of Enforcement
Signed on behalf of the Director of ODA,
by delegated authority

05/23/2025 16:31 9728706500

PAGE 04/04

CORRECTIVE ACTION STATEMENT

RE: H.D. Vest Investment Services, Respondent
Member Firm
(BD No. 133686)

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

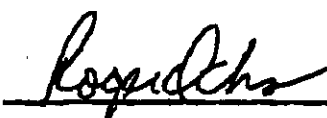
Respondent H.D. Vest Investment Services ("Vest") states that:

1. The accompanying Letter of Acceptance, Waiver and Consent ("AWC") describes certain fees which Vest received in the form of directed brokerage commissions.
2. Vest ceased accepting such fees in the form of directed brokerage commissions in December 2003:
 - This was before the Securities and Exchange Commission issued its proposed rule prohibiting the use of brokerage commissions to finance distribution on February 24, 2004, and before that rule became effective on October 14, 2004. See 17 CFR Part 270, "Prohibition on the Use of Brokerage Commissions to Finance Distribution," Release No. IC-26591, File No. S7-09-04.
 - This was also before Vest received notification that the NASD was initiating the investigation that preceded the enforcement action resulting in the attached AWC.
3. Vest enhanced the disclosure of its revenue-sharing programs in documents that are mailed to its mutual fund customers and posted on its website.

Respectfully submitted,

5-23-05
Date

H.D. Vest Investment Services

By: 

Its: PRESIDENT & CEO