

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CE4050003

TO: Department of Enforcement
NASD

RE: Alexander S. Munda, CRD No. 2709187
Gregory D. Suskind, CRD No. 3056711
Respondents

Pursuant to Rule 9216 of NASD Code of Procedure, Respondents Alexander S. Munda ("Munda") and Gregory D. Suskind ("Suskind") (referred to as "Respondent" or "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 each Respondent alleging violations based on the same factual findings.

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

Each Respondent also understands that his 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:

A. Alexander Munda

Munda entered the securities industry in 1997 as a General Securities Representative of a member of NASD. He worked at two firms prior to joining Davenport. He was registered with Davenport as a General Securities Representative from March 2002 through August 2004. He is not currently registered with a member firm. Munda has no disciplinary history.

B. Gregory Suskind

Suskind entered the securities industry in 1999 as a General Securities Representative of a member of NASD. He worked at two firms prior to joining Davenport. He was registered with Davenport as a General Securities Representative from June 2000 through March 2005. He is not currently registered with a member firm. Suskind has no disciplinary history.

I. WAIVER OF PROCEDURAL RIGHTS

Each 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 him;
- 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, each 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.

Each 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. Each 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:

Summary

Between April 2002 and September 2003 (the "relevant period"), Respondents Alexander S. Mundin and Gregory D. Suskind, while working at Davenport, facilitated the ability of a Davenport client, Client T, to avoid attempts to limit its market timing trading, thereby enabling the client to continue market timing through sub-accounts of variable annuities. Through one or more of the Respondents, the client purchased variable annuities from two insurance companies for hedge funds it managed. The client systematically market timed sub-accounts of the variable annuities it purchased. The insurance companies tried to restrict or rejected the market timing activity. With assistance from one or more of the Respondents, Client T was able to avoid these restrictions by opening new contracts using purportedly different hedge funds and on one occasion naming a different annuitant. As a result of its deceptive conduct, Client T was able to earn profits from its continued market timing activity. Respondents' actions were contrary to the high standards of commercial honor and just and equitable principles of trade required by NASD Conduct Rule 2110.

1. Market Timing Within the Sub-Accounts of Variable Annuities

Market timing is the short term buying and selling of mutual fund shares to exploit inefficiencies in the pricing of mutual fund shares. The "net asset value" of mutual funds typically is calculated once per day, at 4:00 p.m. EST. Because mutual funds typically are priced only once per day, market timers may have an opportunity to engage in arbitrage based on market

information that may not be reflected in that day's net asset value. However, in order to accomplish the arbitrage, market timers typically buy and sell shares on a short-term basis, realizing quick gains and then retreating to the previous market position. Market timing is not illegal per se. However, it may harm other investors in an annuity or mutual fund by raising transaction costs for mutual funds, such as taxes and trading costs, and by requiring funds to retain more assets in liquid investments with lower returns, including cash positions.

Sub-accounts of variable annuities can be an attractive means for market timers to trade mutual funds rapidly, because variable annuities may offer a level of anonymity not available to market timers dealing directly with mutual funds. Investors in variable annuities do not initiate purchases and redemptions of shares directly with the mutual fund company; rather, investors in annuities are permitted to allocate invested funds among a variety of "sub-accounts," which are similar to mutual funds. Rather than purchasing and redeeming funds directly from the mutual fund company, investors in annuities instruct the insurance company to transfer funds from one sub-account to another. The insurance company, in turn, initiates and monitors purchases and redemptions of mutual fund shares once per day on an "omnibus" basis for numerous clients. As a result, mutual fund companies may not have direct access to the identities of individual investors who have requested transfers of funds among the sub-accounts. The anonymity that may be afforded investors in variable annuities can complicate the efforts of the mutual fund companies to detect excessive market timing by any given investor.

Because of the potential harm caused by market timing through variable annuities, insurance companies generally maintain policies and procedures to limit, restrict or prevent market timing. Insurance companies may try to limit market timing by prohibiting additional trades in variable annuities after a customer has placed a certain number of trades. They may also reserve the right to limit any trading that the companies, in their sole discretion, consider disruptive. To avoid these limitations, market timers may use related entities, change annuitants, or otherwise attempt to hide their identities so that they can continue market timing without being detected by insurance companies.

2. Client T Opened Accounts with Respondents at Davenport, Purchased Variable Annuities Offered By Two Insurance Companies, and Through Practices to Avoid Insurance Company Restrictions, Market Timed Sub-Accounts of Those Variable Annuities

In approximately April 2002, Munda and Suskind formed a brokerage relationship with Client T. Munda and Suskind worked together to service Client T's accounts and shared the same registered representative number in connection with some of Client T's accounts. Through Munda and Suskind, Client T purchased variable annuity contracts from Western Reserve Life and, with Munda and Suskind's knowledge, market timed mutual funds through the sub-accounts offered under those contracts.

Respondents knew that the prospectus for the Western Reserve Life product in question stated that the product was intended for long-term investors and not market timers. Moreover, certain of the underlying funds offered through Western Reserve Life also placed restrictions on market timing activity.

Western Reserve Life restricted Client T's market timing, informing Respondents and/or their client in writing that their client's excessive transfers among sub-accounts violated prospectus limitations and may be disruptive to the underlying funds.

Despite this knowledge, Respondents assisted their client in purchasing a new variable annuity contract with Western Reserve Life for another hedge fund that Client T managed, when Respondents knew or should have known that their client was trying to avoid restrictions on market timing through variable annuity contracts.

In addition, Mundin assisted Client T in purchasing a second annuity contract with ING, after ING had limited Client T's trading in a prior contract because it had violated ING's parameters on the total dollar amount invested in an annuity product. The second of these contracts was for a separate hedge fund that Client T managed, and had a different annuitant than the first contract. Mundin alone earned a commission on the second of these transactions with ING. Mundin knew or should have known that his client, in purchasing the second ING contract, was trying to avoid ING's restrictions on the total dollar amount permitted to be invested in a product that allowed market timing within a certain matrix.

Thus, as Respondents knew or should have known, Client T was able to disguise the relationship between the various accounts and continue its market timing activities after such activities had been restricted.

a. Western Reserve Life

Client T, through an entity it managed, purchased a Western Reserve Life "Freedom Access" annuity on June 10, 2002. The entity engaged in market timing through the sub-accounts of the annuity until, on July 26, 2002, Western Reserve Life restricted trading in the account, citing concerns about market timing and transfers of "very large dollar amounts."

Western Reserve Life's July 26 letter informed Mundin and Suskind:

[T]he [Freedom Access product] was designed for individuals seeking long-term tax-deferred accumulation of assets, generally for investment or other long-term purposes....Moreover, the prospectus clearly discloses that this Contract/Policy was not designed for professional market timing organizations or for other persons that use

programmed, large, or frequent transfers. The use of such transfers may be disruptive to an underlying fund portfolio.

After being informed that its market timing activity had been restricted, Client T asked Mundin and Suskind to submit an application for a different entity with a different tax identification number. An email from Client T to Mundin, Suskind and others dated July 26, 2002 stated:

We will plan on liquidating. Also, let's put them [Western Reserve Life] on our hit list once we get the new investment partnership set up with the new tax ID and registration. We would like to get back in there :)

On October 31, 2002, Mundin and Suskind assisted their client in purchasing another annuity from Western Reserve Life by processing and submitting an application on behalf of another hedge fund managed by Client T that had a different tax identification number.

Client T engaged in market timing through the sub accounts of the annuity using the new account until it, too, was detected by Western Reserve Life and restricted.

b. ING

In October 2002, Client T purchased two ING Golden Select annuities for hedge funds it managed. Client T purchased one of the annuities through Mundin at Davenport and the other annuity through another broker dealer. Mundin was unaware of the purchase from the other broker dealer. The product purchased through Mundin allowed unlimited transfers in its sub-accounts up to a certain investment amount and within the parameters of a matrix provided by ING. Client T purchased contracts for different hedge funds, which had different tax identification numbers and annuitants for each contract. On or about October 24, 2002, ING limited trading in both accounts because recent transactions had violated its monetary limitations. In taking this action, ING informed Mundin that annuity contracts purchased by the two Client T hedge funds would be required to trade within its monetary limitations as a combined total, because ING believed that the same entity owned the contracts.

Client T discussed with Mundin and Suskind how to purchase another contract through ING while minimizing the chance ING would restrict it. On or about January 21, 2003, Mundin submitted an application to ING on behalf of a newly formed entity, Entity W, managed by Client T. This application had a different annuitant and was for a different entity than the previous contracts that ING had aggregated and restricted.

Client T proceeded to market time within the limitations established by ING for sub-accounts under the second variable annuity contract it purchased from ING, thus not triggering an attempt by ING to limit its market timing activity and in the process executing more trades than it would have been able to through the first contract alone.

3. Violation

NASD Conduct Rule 2110 requires a member firm and its associated persons to observe high standards of commercial honor and just and equitable principles of trade.

By virtue of the activities described above, MUNDIN and SUSKIND violated NASD Conduct Rule 2110.

B. Each Respondent also consents to the imposition, at a maximum, of the following sanctions:

1. MUNDIN consents to:

- a. A fine of \$5,000, which includes the disgorgement to NASD of commissions of \$3,277.72; and
- b. A suspension from associating with any member firm in all capacities for a period of five (5) months.

The fine shall be due and payable either immediately upon reassociation with a member firm following the 5-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.

2. SUSKIND consents to:

- a. A fine of \$5,000; and
- b. A suspension from associating with any member firm in all capacities for a period of thirty (30) days.

The fine shall be due and payable either immediately upon reassociation with a member firm following the 30-day 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 sanctions imposed herein shall be effective on a date set by NASD staff.

III. OTHER MATTERS

- A. Each Respondent understands that he may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Each Respondent understands that he 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. Each Respondent agrees to pay any monetary sanctions imposed on him upon re-entry as noted above.
- C. Each Respondent specifically and voluntarily waives any right to claim that he is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.
- D. Each Respondent understands that if he is barred or suspended from associating with any NASD member, he becomes 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, each Respondent may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

Each Respondent certifies that he has read and understands all of the provisions of this AWC and has 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 him to submit it.

4/12/05

Date

Alex S. Munding

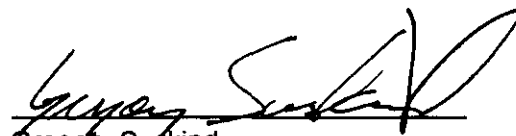
Alexander Munding

Reviewed by:

Jeffrey H. Gray
Jeffrey H. Gray, Esq.
Willcox & Savage, P.C.

222 Central Park Avenue, Suite 1500
Virginia Beach, VA 23462
Counsel for Alexander Munding

4/12/05
Date


Gregory Suskind

Reviewed by:


Jeffrey H. Gray, Esq.
Willcox & Savage, P.C.
222 Central Park Avenue, Suite 1500
Virginia Beach, VA 23462
Counsel for Gregory Suskind

Accepted by NASD:

4/28/05
Date


James E. Day,
Chief Counsel, Director,
Department of Enforcement

Signed on behalf of the Director of ODA, by
delegated authority