

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E0220020636-02

TO: Department of Enforcement
NASD

RE: Dennis E. Derr, Respondent
General Securities Representative and Investment and
Investment Company Products/Variable Contracts Representative
CRD No. 1939854

Pursuant to Rule 9216 of NASD Code of Procedure, I, Dennis E. Derr ("Derr"), 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 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 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 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 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 or other legal proceedings in which NASD is not a party.

I also understand that my 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:

From on or about January 20, 1993 through August 23, 2001, Derr was associated with NASD member Transamerica Financial Advisors, Inc. ("TFA") as a General Securities Representative and Investment Company Products/Variable Contracts Representative. Derr is currently associated with a different NASD member. Derr has previously been the subject of regulatory action by the State of California Department of Corporations as follows:

On December 24, 2002, the California Department of Corporations issued a Cease and Desist Order against Derr requiring him to cease and desist from offering or selling securities relating to TLC America, Inc. and/or any of its affiliates in the State of California.

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:

Between June 1998 and September 2000, Derr participated in private securities transactions without providing prior written or oral notification to, and receiving prior written approval from, the NASD member with which he was associated. The securities transactions involved purchases by 24 public customers of promissory notes issued by TLC America, Inc., which TLC described as "tax lien certificates." The customers invested a total of approximately \$1,500,000 on which Derr earned approximately \$142,240 in commissions.

The foregoing acts, practices and conduct constitute separate and distinct violations of Conduct Rules 3040 and 2110 by Derr.

- B. I also consent to the imposition, at a maximum, of the following sanctions:

1. A suspension from associating with any NASD member firm, in any and all capacities, for a period of two (2) years;
2. A fine in the amount of \$5,000. The fine shall be due and payable either immediately upon reassociation with a member firm following the 2-year 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; and

3. I will disgorge commissions in the sum of \$90,240.00,¹ and will pay such sum as restitution to the investors in such principal amounts identified in Schedule "A" attached hereto, plus interest from July 15, 1999 through the date restitution is paid in full. Interest shall be paid at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2). Payment of this restitution, with interest as set forth above, is a prerequisite either to reassociation with a member firm or to any such application or request for relief from any statutory disqualification. Satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution must be provided by Derr to NASD staff prior to reassociation with any member firm, or prior to making any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. If for any reason Derr cannot locate any customer identified in Schedule "A" after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Derr shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided. The imposition of restitution or any other monetary sanction herein, and the timing of such payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III

OTHER MATTERS

- A. I understand that I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I 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 sanctions imposed on me upon re-entry as noted above.

¹ The disgorgement amount was arrived at by taking the total amount of commissions Derr earned from his involvement with TLC, less the following amounts: \$32,000, which Derr paid to the TLC Federal Court Receiver in settlement of a complaint the Receiver had filed against Derr; and less \$20,000 which Derr already paid in connection with an arbitration settlement.

- 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 barred or suspended from associating 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 or 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.

12/28/05
Date

Dennis E. Derr
Dennis E. Derr

Accepted by NASD:

2/22/06
Date

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

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