

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E0220030940-01

TO: Department of Enforcement
NASD

RE: Montecito Advisors, Inc. Respondent
Member
CRD No. 104004

Elie Michel Genadry, Respondent
Investment Company/Variable Products Principal
CRD No. 721443

Pursuant to Rule 9216 of NASD Code of Procedure, 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 Respondents alleging violations based on the same factual findings.

Respondents 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 Respondents; and
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against them;
 - 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. Respondents 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 finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondents also understand that their 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:

Montecito Advisors, Inc. has been a member of NASD since on or about August 22, 2000. It has not been the subject of disciplinary action by the Securities and Exchange Commission, NASD, or other state regulators.

Elie Michel Genadry entered the securities industry in 1980 as an investment products/variable annuities representative registered with a member of NASD. In 1981, he became registered as an investment products/variable annuities principal. Genadry has been MAI's Chief Executive Officer since the firm's inception. He has not been the subject of disciplinary action by the Securities and Exchange Commission, NASD, or state regulators.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondents 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 them;
- 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, Respondents specifically and voluntarily waive any right to claim bias or prejudice 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.

Respondents 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. Respondents hereby accept and consent, without admitting or denying the 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

From in or about November 2002 through June 2004, PCM, one of the firm's customers, utilized multiple accounts to engage in market-timing transactions in several different mutual funds. On at least eight occasions during the relevant period, MAI received notices ("block notices") from mutual funds restricting certain accounts that were under PCM's common control from engaging in future transactions in certain funds. On at least 39 occasions during the relevant period, certain PCM accounts continued to trade in funds from which they were blocked. MAI's clearing firm or the mutual fund, however, detected the improper transactions and cancelled or rejected them. MAI failed to detect or prevent these prohibited transactions.

1. Inadequate Supervisory System and Procedures.

From in or about November 2002 through June 2004, MAI, through Genadry, failed to establish, maintain or enforce a supervisory system and written procedures that were reasonably designed to detect and prevent market timing activities that contravened applicable mutual fund prospectus terms in accounts

owned or controlled by MAI's clients. Specifically, MAI failed to maintain, update and enforce effective internal policies, systems and procedures in, among other things, the following respects:

- The firm lacked an adequate supervisory system to detect and prevent customers from engaging in market timing activity in contravention of the terms of the applicable mutual fund prospectuses.
- When the firm became aware of restrictions placed by the mutual funds upon accounts that were engaging in market timing in contravention of the applicable prospectus terms, the firm lacked procedures and failed to take adequate steps to detect and prevent its customers from disregarding the trading restrictions established by mutual funds. Although the firm relayed the block notices to the customers, the firm failed to conduct any follow-up steps or review to ensure that its customers complied with the terms of the block notice restrictions and/or prohibitions in the funds' prospectuses.
- The firm lacked written supervisory procedures relevant to mutual fund market timing activity.

The aforementioned conduct constitutes separate and distinct violations of NASD Conduct Rules 3010 and 2110 by MAI and Genadry.

2. Books and Records Violations

Exchange Act Rules 17a-3(a)(6) and 17a-4 require member firms to create and preserve a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. As of May 2, 2003, this requirement included records of the time of receipt of orders to purchase or sell securities, including shares of mutual funds. During the period 2002 and 2003, MIA, through Elie Michel Genadry, failed to create and maintain memoranda records that reflected all information, as required pursuant to the foregoing SEC rules, to purchase or sell mutual fund shares where MAI's customers entered mutual fund orders directly through electronic access to the clearing firm's order entry platforms.

The aforementioned conduct constitutes separate and distinct violations of Section 17(a) of the Exchange Act, and Rules 17a-3 and 17a-4 promulgated thereunder by MAI, and Conduct Rules 3110 and 2110 by MAI and Genadry.

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

1. A censure of each respondent; and
2. A joint and several fine in the amount of \$27,500.

In addition, MAI shall comply with the following undertakings within the time periods specified below (unless otherwise extended by NASD staff):

- a. Upon submission of this AWC, an officer of MAI shall certify to NASD in writing that, with respect to the relevant period, and to the best of MAI's knowledge based upon reasonable inquiry, MAI has made a thorough review of the trading that occurred at the firm during the relevant period to detect any and all instances of its customers evading mutual fund block letter restrictions and has disclosed to NASD all transactions that contravened such block letter restrictions.
- b. Within 90 days after issuance of the AWC, an officer of MAI shall certify to NASD that the firm has reviewed its procedures regarding market timing and has systems and procedures in place that are reasonably designed to ensure that block letter restrictions are enforced.

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

III.

OTHER MATTERS

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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. Respondents agree to pay any monetary sanctions imposed on each of them 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 they propose to pay any fine imposed.
- C. Respondents specifically and voluntarily waive any right to claim that they are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

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 us to submit it.

4-4-06
Date

Montecito Advisors, Inc., Respondent

By: Elle M Genadry
Elle Genadry, President

4-4-06
Date

Elle M Genadry
Elle Genadry, Individually

Reviewed by:

C. Timothy Smoot
C. Timothy Smoot, Esq.
Counsel for Respondent
LAW OFFICES OF C. TIMOTHY SMOOT
118 Via Buena Ventura
Redondo Beach, CA 90277-5805
(310) 791-1093

Accepted by NASD:

4/17/06
Date

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

Cynthia A. Kittle
Cynthia A. Kittle
Senior Regional Attorney
NASD Department of Enforcement
300 South Grand Ave., Ste. 1600
Los Angeles, CA 90071
(213) 613-2616
(213) 617-1570

NASD District Director

Lani M. Sen Woltmann, District Director

NASD, District 2

300 South Grand Ave., Ste. 1600

Los Angeles, CA 90071

(213) 229-2300

STATEMENT AND CERTIFICATION OF CORRECTIVE ACTION
NASD NO. E0220030940

Respondents submit this Corrective Action Statement. It does not constitute factual or legal findings by the NASD, nor does it reflect the views of the NASD, or its staff.

TO: Department of Enforcement
NASD

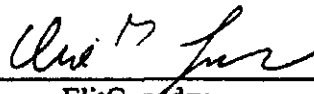
RE: Montecito Advisors, Inc., Respondent
Member CRD No. 104004

Eli Michel Genadry, Respondent
Investment Company/Variable Products Principal
CRD No. 721443

I, Eli Michel Genadry, on behalf of Montecito Advisors, Inc. and myself, hereby certify that Montecito Advisors, Inc., took the following corrective actions relating to its lack of policies and procedures for reviewing its clients' market timing trading activities in mutual funds:

In October of 2003 in response to the issues raised by Eliot Spitzer's actions against various firms, I began drafting policies and procedures relating to the market timing trades of Montecito's clients. In January 2004, we submitted our first set of procedures to the NASD. Over the next year in response to procedures adopted by our clearing firm and comments from the NASD, we revised those procedures approximately 6 times. In December 2004, we adopted extensive new policies and procedures relating to market timing trades by our clients. Those policies and procedures have been in effect since that time. We will continue to respond appropriately to comments by the NASD regarding any changes or additions that they feel should be made to those policies.

Date: April 4, 2006



Eli Genadry
Investment Company/Variable Products Principal