

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E0220040193-01

TO: Department of Enforcement
NASD

RE: Daryl "Jack" Drawbaugh, Respondent
Financial and Operations Principal
CRD No. 71778

Pursuant to Rule 9216 of NASD Code of Procedure, I, Daryl "Jack" Drawbaugh ("Drawbaugh"), 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 May 1979 through July 2005, Drawbaugh was associated with former NASD member J. Alexander Securities, Inc. ("JASI") as a Financial and Operations Principal and General Securities Principal. Since October 19, 2004, he has been associated with a different NASD member as a General Securities Representative. Drawbaugh has been the subject of the following prior disciplinary action by NASD:

In September 2003, NASD accepted a Letter of Acceptance, Waiver and Consent through which Drawbaugh consented to findings that he violated SEC Rule 17a-3 and Conduct Rule 3010 based upon his failure to make and preserve accurate books, accounts and records for JASI, which resulted in JASI's overstatement of its net capital by approximately \$467,000 for the period ending March 31, 2002. Drawbaugh, JASI and JASI's president were censured and fined, jointly and severally, \$5,000. (AWC No. C02030062).

He has not been the subject of any prior disciplinary action by any other self-regulatory organizations, the Securities and Exchange Commission, or any state regulator.

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:

1. Inaccurate Books and Records: From May 30, 2003 through April 30, 2004 (the "Relevant Period"), JASI, though Drawbaugh, in his capacity as the firm's Financial and Operations Principal, failed to make and keep accurate financial records as required by SEC Section 17(a) and Rule 17a-3, in that the recordation of liabilities, the calculation of a trial balance and the computation of net capital for the last business day of each month were materially inaccurate. JASI's books and records during the Relevant Period were materially inaccurate because they generally, (a) understated the cost of securities it maintained in its proprietary account by as much as \$634,000; and (b) understated total liabilities between \$441,000 and \$759,000.

The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Rules 3110 and 2110 by Drawbaugh.

2. Net Capital Deficiencies: On the last business day of each month during the Relevant Period,¹ JASI, though Drawbaugh, conducted a securities business in contravention of SEC Rule 15c3-1, because it utilized the instrumentalities of interstate commerce to engage in a securities business while failing to maintain

¹ JASI complied with its minimum net capital requirements in June 2003.

required minimum net capital. During the Relevant Period, JASI was required to maintain net capital of at least \$224,000. However, for the last business day of each such month, the firm's actual net capital was deficient by at least \$128,816, and as much as \$624,569.

The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Rule 2110 by Drawbaugh.

3. Inaccurate FOCUS Reports: During the Relevant Period, Drawbaugh submitted FOCUS Reports on behalf of JASI, as required by SEC Section 17(a) and Rule 17a-5, each of which contained materially inaccurate net capital computations.

The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Rule 2110 by Drawbaugh.

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

1. A bar from associating with any NASD member as a Financial and Operations Principal; and
2. A fine in the amount of \$5,000.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this AWC by the NAC.

III.

OTHER MATTERS

- A. I agree to pay any monetary sanctions imposed on me 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 I propose to pay any fine imposed.
- B. 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.

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.

Nov. 1, 2005

Date

Daryl Jack Drawbaugh
Daryl "Jack" Drawbaugh, Respondent

Accepted by NASD:

1/3/06
Date

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

David A. Greene

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