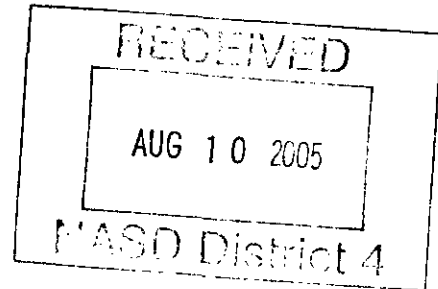


NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E0420040066-01

**To: Department of Enforcement
NASD**

**Re: Froggatte & Company
Member (CRD No. 43161)
and
Theron L. Froggatte
Financial and Operations Principal, General
Securities Principal, Municipal Securities Principal,
Investment Company/Variable Contracts Representative and
Direct Participation Programs Representative (CRD No. 1902647)**



Pursuant to NASD Procedural Rule 9216, Froggatte & Company (Froggatte) and Theron L. Froggatte (T. Froggatte) (collectively referred to as 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 Procedural 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 Respondents;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Procedural 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or rights 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:

Froggatte has been a member of NASD since May 1998. Froggatte conducts a general securities business from its main office located in Wichita, Kansas. Froggatte has been the subject of two prior formal disciplinary actions by NASD relevant to the instant action. See AWC No. C04990014 (15c3-1 - net capital violation) and AWC C04000034 (15c3-1 - net capital violation).

T. Froggatte entered the securities industry in 1988 when he associated with a member firm of the NASD. From May 8, 1998 through the present, T. Froggatte has been associated with Froggatte as its president and financial and operations principal and registered with the NASD as financial and operations principal; general securities principal; municipal securities principal; investment company/variable contracts representative and direct participation programs representative, which registrations remain in full force and effect. T. Froggatte has been the subject of two prior formal disciplinary actions by NASD related to the instant matter. See AWC No. C04990014 (15c3-1 - net capital violation) and AWC C04000034 (15c3-1 - net capital violation).

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 Respondents;
- 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.

Furthermore, Respondents 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 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.

In addition, Respondents specifically and voluntarily waive any right to claim that a person violated the *ex parte* prohibitions of NASD Procedural Rule 9143 or the separation of functions prohibitions of NASD Procedural Rule 9144, in connection with such person 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 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:

Net Capital Requirements **NASD Conduct Rule 2110 and SEC Rule 15c3-1(a)**

1. On March 31, 2004, April 30, 2004, June 30, 2004, July 30, 2004, August 31, 2004, September 30, 2004 and October 29, 2004, Froggatte, acting through T. Froggatte, violated SEC Rule 15c3-1(a) by conducting a general securities business while failing to maintain minimum required net capital.
2. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and SEC Rule 15c3-1(a) by Froggatte, and violations of NASD Conduct Rule 2110 by T. Froggatte.

Records to be Made by Certain Exchange Members, Brokers and Dealers **NASD Conduct Rule 2110 and SEC Rule 17a-3(a)(2) and (11)**

3. On March 31, 2004, April 30, 2004, June 30, 2004, July 30, 2004, August 31, 2004, September 30, 2004 and October 29, 2004, Froggatte, acting through T. Froggatte, failed to prepare accurate general ledger, trial balance and net capital computations.
4. Such acts, practices and conduct constitute separate and distinct violations of SEC Rule 17a-3 and NASD Conduct Rule 2110 by Froggatte, and violations of NASD Conduct Rule 2110 by T. Froggatte.

**Membership Agreement - Application for Approval of
Change in Ownership, Control, or Business Operations
NASD Conduct Rule 2110 and NASD Membership and Registration Rule 1017**

5. In March 2004, Froggatte, acting through T. Froggatte, participated in an underwriting on a firm commitment basis, which was not permitted under the express terms of Froggatte's July 1, 2003 Membership Agreement with NASD.
 6. From January 1, 2004 through November 24, 2004, Froggatte, acting through T. Froggatte, effected more than ten transactions for its own investment account, which was not permitted under the express terms of Froggatte's July 1, 2003 Membership Agreement with NASD.
 7. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Membership and Registration Rule 1017 by Froggatte, and violations of NASD Conduct Rule 2110 by T. Froggatte.
- B. We also consent to the imposition, at a maximum, of the following sanctions:
1. a joint and several fine of \$25,000 against Froggatte and T. Froggatte; and
 2. a suspension of T. Froggatte for 30 calendar days from association with any NASD member as a financial and operations principal (FINOP).

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

III. OTHER MATTERS

- A. Respondents understand that they may **attach** a Statement of Corrective Action to this AWC, which 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 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.

Respondents certify that this AWC has been read and that all provisions of this AWC are understood, and that they have been given a full opportunity to ask questions about it, and that no offer, threat, inducement,

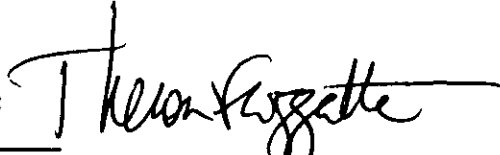
or promise of any kind, other than the terms set forth herein, has been made to induce Respondents to submit it.

FROGGATTE & COMPANY

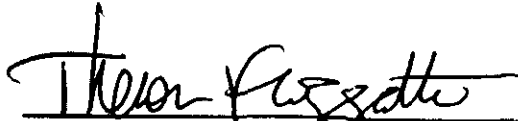
Date

8-2-05

By:



Theron L. Froggatte, President


THERON L. FROGGATTE

Reviewed by:

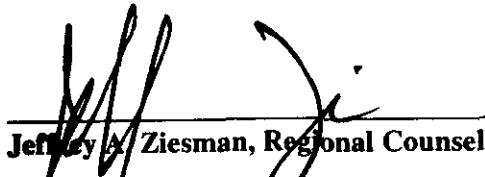
Counsel for Respondents

Accepted by NASD:

August 29, 2005

Date

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


Jeffrey A. Ziesman, Regional Counsel
NASD District Director

Thomas D. Clough
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Kansas City, MO 64105
(816) 802-4700