

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E062005005901

TO: Department of Enforcement
NASD

RE: D.E. Wine Investments, Inc.
CRD No. 21188

Robert Anthony Yrshus
General Securities Principal
CRD No. 858876



Pursuant to Rule 9216 of NASD Code of Procedure, D.E. Wine Investments, Inc., [REDACTED] and Robert Yrshus (hereinafter referred to as "Wine," [REDACTED] and "Yrshus," respectively or "Respondents," collectively) 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 them; and
3. If accepted:
 - a. this AWC will become part of Respondents' 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 Respondents' 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 allegation 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:

D.E. Wine Investments, Inc. is currently, and was during all times relevant hereto, a member of NASD and registered as a broker/dealer with the Securities and Exchange Commission. The firm became registered with NASD in January 1988. The firm has no relevant disciplinary history.

Robert Anthony Yrshus entered the securities industry in November 1978, when he registered with NASD member firm First Jersey Securities, Inc. He subsequently registered with two other NASD firms before associating with D.E. Wine Investments, Inc. in October 1990. Yrshus currently serves as a Vice President of the firm. During his career in the securities industry, Yrshus obtained Series 7, 64 and 24 securities licenses. He has no prior disciplinary history.

[REDACTED] entered the securities industry in October 1983, when he registered with NASD member firm Commonwealth Securities of Utah. He subsequently registered with two other NASD firms before associating with D.E. Wine Investments, Inc. in March 1989. [REDACTED] currently serves as D.E. Wine's Secretary/Treasurer and is a Vice President of the firm. He has no relevant disciplinary history.

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 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.

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 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. In or about November 2002, D.E. Wine Investments, Inc., acting through Robert Yrshus, commenced a best efforts, "minimum-maximum" offering conducted by Network Compounds Incorporated ("Network"). According to the Network offering memorandum, the offering would raise a minimum of \$650,000 and a maximum of \$2,000,000. The memorandum also represented that investor funds would be deposited into a bank escrow account until the minimum offering amount was raised, and that investor funds would be promptly returned if the minimum offering amount was not raised during the offering period. Wine, acting through Yrshus, failed to deposit customer funds received in connection with the Network offering into

a bank escrow account as required by SEC Rule 15c2-4. Instead, Wine deposited the funds into a regular bank account under its control. There was no escrow agreement for the account, which was styled, "Network Compounds Incorporated: Escrow Account." Additionally, although the terms of the Network offering were materially changed to lower the minimum offering amount from \$650,000 to \$200,000, Wine failed to terminate the offering and return investor funds as required by SEC Rule 10b-9. Instead, the firm sent a letter to each investor in the offering asking them to reconfirm their interest in the offering under the revised terms. Upon receipt of signed reconfirmations from each investor, the firm released customer funds raised in the offering to the issuer after having raised only \$238,073.

Wine's actions rendered false the representations in the Network offering memorandum that: (1) the offering would raise a minimum of \$650,000, when it closed the offering after raising only \$238,000; and (2) investor funds would be promptly returned if the minimum offering amount was not obtained during the offering period, when it released investor funds to the issuer before the minimum offering amount was raised.

2. In or about December 2004, D.E. Wine Investments, Inc., acting through [REDACTED] commenced a best efforts, "minimum-maximum" offering conducted by Safe Fuels, Inc. ("Safe Fuels"). According to the Safe Fuels offering memorandum, the offering would raise a minimum of \$2,500,000 and a maximum of \$5,000,000. The offering memorandum also represented that investor funds would be deposited into an escrow account until the minimum offering amount was raised. Finally, the memorandum represented that the offering would close no later than March 31, 2005 ("closing date"). Although the offering had raised only \$15,000 by the closing date, Wine failed to terminate the offering and return investor funds as required by SEC Rule 10b-9. Instead, the issuer sent letters to the two investors in the offering informing them that the minimum offering amount had been eliminated. One investor was told that he could have his funds returned or have them forwarded to the company to purchase shares of common stock in Safe Fuels. The other investor was told that Safe Fuels would use his funds for general corporate purposes and that he would receive shares of the company's common stock. Wine subsequently released the customers' funds to Safe Fuels.

Wine's actions rendered false the representation in the offering memorandum that the Safe Fuels offering would raise a minimum of \$2,500,000 before the closing date, when it failed to terminate the offering and return investors funds after failing to raise the minimum offering amount during the offering period.

Such acts, practices, and conduct constitute separate and distinct violations of Sections 10(b) and 15(c) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-9 and 15c2-4 thereunder, and NASD Conduct Rule 2110 by D.E. Wine Investments, Inc., and violations of Section 10(b) of the Exchange Act

and Rule 10b-9 thereunder, and NASD Conduct Rule 2110 by Robert Anthony Yrshus and [REDACTED]

3. During the period from November 2002 to February 21, 2003, in connection with the above-described Network offering, D.E. Wine Investments, Inc., acting through Yrshus, held customer funds by virtue of its failure to place customer funds raised in the offering in a bona fide escrow account. As such, Wine became subject to the full provisions of SEC Rule 15c3-3, and was required to perform reserve computations and to make deposits into a special reserve bank account for the exclusive benefit of customers of the Network offering. The firm failed to make any such computations or deposits.
4. At the time that it commenced the Network offering, Wine's minimum net capital requirement was \$5,000. By virtue of its holding customer funds, Wine's minimum net capital requirement increased to \$250,000. The firm's actual net capital during the relevant time period was significantly less than the required minimum. For example, on December 31, 2002, the firm, acting through Yrshus, conducted a securities business while failing to maintain its required minimum net capital. On that date, the firm's net capital was \$20,646, resulting in a net capital deficit of \$229,354. Additionally, the firm filed an inaccurate FOCUS report that reflected that it was in net capital compliance for the period ending on December 31, 2002.

Such acts, practices, and conduct constitute separate and distinct violations of Section 15(c) of the Exchange Act, Rules 15c3-1(a)(2)(vi) and 15c3-3 thereunder, and NASD Conduct Rule 2110 by D.E. Wine Investments, Inc., and violations of NASD Conduct Rule 2110 by Robert Anthony Yrshus.

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

D.E. Wine Investments, Inc.: A censure and a monetary fine in the amount of \$20,000, of which \$15,000 will be imposed jointly and severally with Robert Anthony Yrshus, and \$5,000 will be imposed jointly and severally with [REDACTED]

Robert Anthony Yrshus: A censure and a monetary fine in the amount of \$15,000 to be imposed jointly and severally with D.E. Wine Investments, Inc.

[REDACTED] A censure and a monetary fine in the amount of \$5,000 to be imposed jointly and severally with D.E. Wine Investments, Inc.

The sanction imposed herein shall be effective on a date set by the Association staff.

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[REDACTED] and Robert Yrshus

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 them upon notice that this AWC has been accepted and that such payments are due and payable and have attached Election of Payment forms 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 they 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 them to submit it.

12-13-2005
Date

D.E. Wine Investments, Inc., Respondent

By: [Signature]
(Signature)

Name: W. Randal Miller
(Printed Name)

Title: V.P.

12-13-2005
Date

[Signature]
Robert Anthony Yrshus, Respondent

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[REDACTED] and Robert Yrshus

12-13-2005

Date

Reviewed by:

n/a
Counsel for Respondent

Accepted by NASD:

12/29/2005
Date

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


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