

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ## E102002034201

TO: Department of Enforcement
NASD

RE: Joseph Gunnar & Co. L.L.C. (BD No. 24795)
Respondent

Pursuant to Rule 9216 of NASD Code of Procedure, Joseph Gunnar & Co., L.L.C. ("Gunnar" or "Respondent"), submits 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 Respondent alleging violations based on the same factual findings.

Respondent understands 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 Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's 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. Respondent 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

Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondent also understands that its 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:

Gunnar first became registered as a member of NASD on or about March 14, 1990.

Gunnar has no disciplinary history with the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondent;
- 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, Respondent specifically and voluntarily waives 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.

Respondent further specifically and voluntarily waives 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. Respondent hereby accepts and consents, 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. During the period of in or about November 2001 through in or about April 2002, Gunnar served as placement agent for a "minimum-maximum" contingency private placement offering of securities (convertible notes) issued by Chell Group Corporation ("Chell"). The terms and conditions of the offering were set forth in a private placement memorandum dated December 1, 2001 and provided for a contingency minimum of \$3,000,000 and maximum of \$8,000,000. On December 1, 2001, Gunnar entered into an Escrow Agreement with Bank of New York with respect to the establishment of an escrow account in connection with the offering. The Escrow Agreement provided that if a minimum of \$3,000,000 was not deposited in the Escrow Account as of February 28, 2003, the Escrow Account was to be terminated and funds returned to investors.

However, on February 12, 2002, when the stated contingency of \$3,000,000 had not been met, Gunnar caused investor funds to be disbursed from the escrow account and transferred to, inter alia, Chell and Gunnar, despite the fact that the Escrow Agreement specifically provided that if \$3,000,000 in private placement subscriptions had not been received into the escrow account, the escrow account was to be terminated and funds returned to the investors. Gunnar and Chell amended the terms of the offering, but no corresponding amendment or change was ever made to the Escrow Agreement to reflect the changed offering terms. The Escrow Agreement thus did not accurately reflect the offering contingency.

By reason of the foregoing, Gunnar violated SEC Rule 15c2-4 and NASD Conduct Rule 2110.

2. During the period of in or about June 2002 through in or about July 2002, Gunnar served as placement agent for a "minimum-maximum" contingency private placement offering of securities (convertible notes and warrants) issued by the V-One Corporation ("V-One"). The terms and conditions of the offering were set forth in a private placement

memorandum dated June 25, 2002 (the "V-One PPM") and provided for a contingency minimum of \$1,000,000 and maximum of \$2,300,000. On or about June 10, 2002, Gunnar entered into an Escrow Agreement with Bank of New York and V-One with respect to the establishment of an escrow account in connection with the offering. Gunnar and V-One amended the terms of the offering, but no corresponding amendment or change was ever made to the Escrow Agreement to reflect the changed offering terms. The Escrow Agreement thus did not accurately reflect the offering contingency. Further, Gunnar permitted funds to be disbursed from the escrow account to V-One and to Gunnar's counsel even though conditions occurred pursuant to which the offering should have been terminated and funds returned to investors.

By reason of the foregoing, Gunnar violated SEC Rule 15c2-4 and NASD Conduct Rule 2110.

3. During the period of in or about March 2001 through in or about July 2002, Gunnar failed to timely file or ensure the timely filing of six amendments to Uniform Notices of Securities Industry Registration (Forms U-4) and Uniform Termination Notices of Securities Industry Registration (Forms U-5) to report complaints received by the firm.

By reason of the foregoing, Gunnar violated Article V, Sections 2 and 3 of NASD's By-Laws and NASD Conduct Rule 2110.

4. While conducting a securities business on March 29, 2002, Gunnar failed to maintain the required minimum net capital as required by SEC Rule 15c3-1. Specifically, Gunnar was required to maintain net capital in the amount of \$100,000. On that date, Gunnar had a net capital of \$53,104, and a net capital deficiency of \$46,896.

By reason of the foregoing, Gunnar violated SEC Rule 15c3-1 and NASD Conduct Rule 2110.

- B. Respondent also consents to the imposition, at a maximum, of the following sanctions:

- A censure; and
- fine of \$20,000.

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

III.

OTHER MATTERS

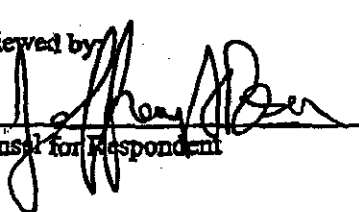
- A. Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Respondent agrees to pay any monetary sanctions imposed 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 Respondent proposes to pay any fine imposed.
- C. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent certifies that it has read and understands all of the provisions of this AWC and has 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.

11/7/05
Date

Joseph Gunder & Co. L.L.C.

By: 
Its: Member

Reviewed by: 
Counsel for Respondent

Accepted by NASD:

November 23, 2005

Date



Frank M. Weber

Regional Counsel

District 10 - Department of Enforcement

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

NASD District Director

Hans Reich

Senior Vice President

NASD, District 10

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