

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E3A2004025901

TO: Department of Enforcement
NASD

RE: James R. Frith, Respondent
General Securities Representative
CRD No. 4394217

Pursuant to Rule 9216 of NASD Code of Procedure, I 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:

James R. Frith ("Frith") entered the securities industry in July 2001, as a general securities representative of a member of NASD. He has not been registered or associated with a member since July 14, 2004, when Thrivent Investment Management, Inc. ("Thrivent") terminated his registration and employment. Frith has not previously been the subject of any disciplinary action by NASD, the Securities and Exchange Commission, other self-regulatory organization 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 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.

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:

In March 2003, Thrivent customer, A.T. wrote a check for \$30,000 payable to a company Frith owned. Frith led A.T. to believe that he was purchasing a real estate investment. Frith deposited the \$30,000 into a bank account he controlled. Subsequently in October 2003, the Us, wrote a check to Frith for \$25,000. Frith led the Us to believe they were investing in a bond. Frith deposited the \$25,000 into his bank account. In February 2004, customer S.A. gave Frith two blank checks. Like the other customers, S.A. believed she was providing the checks for purposes of investing funds. Frith made one of the checks payable to the Us in the amount of \$25,000, thereby repaying the \$25,000 he took from them.¹ He made the second check for \$5,000 payable to himself and deposited it into his personal checking account. A.T., the Us and S.A. were all customers of Thrivent. In total Frith took \$85,000 from the three customers.

These acts constituted the improper use of customer funds. Each instance of an unauthorized and personal use of the customer funds constituted a separate and distinct violation of NASD Conduct Rule 2330. Further, each such instance constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a separate and distinct violation of NASD Conduct Rule 2110 by Respondent.

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

A bar from association with any member of the NASD in any capacity;

An order to pay restitution to customer A.T. (identified in attachment A) in the total amount of \$30,000, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from March 31, 2003, until the date of payment. Restitution amounts ordered, pursuant to this disciplinary action, are due and payable immediately upon reassociation with a member firm following the suspension noted above, or prior to any application or request for

¹ Thrivent later repaid the \$30,000 to S.A.

relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies. If for any reason Respondent cannot locate A.T. after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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 understand that if I am barred or suspended from associating with any NASD member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1.)

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 me to submit it.

6/17/2005
Date

James R. Frith
James R. Frith

Accepted by NASD:

7/19/05
Date

Joseph M. McCarthy
Joseph McCarthy, Associate Vice-President
and District Director, Signed on behalf of
the Director of ODA, by delegated authority