

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E8A2004070901

TO: Department of Enforcement
NASD

RE: Hornor, Townsend & Kent, Inc.
BD No. 4031

Pursuant to Rule 9216 of NASD Code of Procedure, Hornor, Townsend & Kent 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 Hornor, Townsend & Kent (HTK) alleging violations based on the same factual findings.

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

AWC is without factual basis. Nothing in this provision affects HTK's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

HTK 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:

Honor Townsend & Kent (f/k/a Penn Mutual Equity Services, Inc.) has been a broker-dealer registered with the SEC and NASD since 1969. The firm is a subsidiary of The Penn Mutual Life Insurance Company. The firm has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

HTK 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 HTK;
- 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, HTK 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.

HTK 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. HTK hereby accepts and consents, without admitting or denying the 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:

Background

Prior to enactment by Congress of the Government Securities Act Amendments (GSAA) of 1993, NASD was statutorily precluded under the Securities Exchange Act of 1934 from applying NASD Conduct Rules to transactions in exempted securities as defined in Section 3(a)(12) of the Exchange Act.

The GSAA eliminated the statutory limitation, thus permitting NASD to apply its Conduct Rules to transactions in all exempted securities, except municipal securities. Subsequent to the enactment of the GSAA amendments, NASD filed proposed amendments with the SEC to implement this expanded sales practice authority. The amendments were approved by the SEC on August 20, 1996 and announced in Notice to Members 96-66 (October 1996). As a result of the amendments, NASD Conduct Rules apply to all sales by members and their registered representatives of exempted securities (except municipal securities) as defined in Section 3(a)(12) of the Exchange Act, including group variable contracts.

Group Variable Contracts

Many life insurance companies create variable annuity and life insurance contracts and distribute such products to qualified retirement plans directly, or through broker/dealers. Qualified retirement plans permit plan participants, through employer and/or employee contributions, to accumulate tax-deferred savings paid out upon retirement or termination of employment.

Insurance companies structure variable annuity and life insurance contracts to provide investment options or life insurance benefits for qualified retirement plans, typically at the discretion of the plan participant rather than the employer. The investment options may consist of underlying stock and bond investment portfolios, the values of which fluctuate with the market value of the securities in the portfolio. Through the use of variable life insurance contracts, the insurance

company may also provide a death benefit for the contractholder or plan participant. The types of customers who purchase group variable contracts vary from large corporations to small businesses.

Sale of Group Variable Annuity Contracts by HTK Representatives

In December 2004, approximately 161 registered representatives of HTK disclosed that between 1997 and 2004, they had sold group variable annuity contracts and earned commissions of approximately \$3.5 million.

During the relevant period, HTK had selling agreements with 24 insurance companies for the sale of insurance products and allowed its registered representatives to sell insurance products, including group variable annuity contracts, after disclosure of this practice to HTK.

Between 1997 and 2004, subsequent to the passage of GSAA and the imposition of NASD Conduct Rules upon the sales of exempted securities, including group variable annuity contracts, HTK failed to establish and maintain a system to supervise the activities of each registered representative and associated person reasonably designed to achieve compliance with the applicable securities laws and regulations and NASD Rules related to the sale of group variable annuity contracts. Also, HTK failed to establish and maintain written supervisory procedures related to the sale of group variable annuity contracts. In addition, HTK failed to properly record group variable annuity contract transactions on its books and records.

The above constitutes separate and distinct violations of NASD Conduct Rules 2110, 3010, 3040, 3110 and SEC Rule 17a-3.

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

A censure and a fine of \$125,000.

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

III.

OTHER MATTERS

- A. HTK 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. HTK 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. HTK agrees to pay any monetary sanctions imposed on it 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 HTK proposes to pay any fine imposed.
- C. HTK 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.

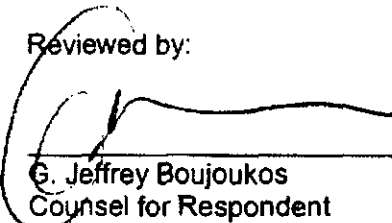
We certify that we have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce us to submit it.

9-22-06
Date


Hornor Townsend & Kent
Respondent

By: Richard J. Miller
President

Reviewed by:


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