

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

No. E8A2004080201

TO: Department of Enforcement
NASD

RE: Herbert H. Covington III
CRD No. 2080038

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 finding 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:

Herbert Covington entered the securities industry in 1990 as a General Securities Representative of a member of NASD. In 2003 he became similarly registered with Ryan Beck & Co. (Member), where he remained until July 2004. Covington has no prior disciplinary history and he is not currently registered with any NASD member.

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 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.

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 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:

Beginning in or about January 2004, Respondent Covington, while employed by the Member, established and operated for compensation a corporation to pursue refining technologies in the precious metals industry. In connection therewith, Covington failed to provide prompt written notice to the Member of his outside business activities, in violation of NASD Conduct Rules 2110 and 3030.

Between January 2004 and June 2004, Respondent Covington participated, for compensation, in private securities transactions by selling interests in a limited liability company to at least four members of the public. The four customers invested a total of approximately \$174,500. Covington failed and neglected to give written notice of his intention to engage in such activity to the Member, and failed to receive written approval from the Member prior to engaging in such activities, in violation of NASD Conduct Rules 2110 and 3040.

On or about September 15, 2005, NASD Staff sent by first class mail and by certified mail to Respondent Covington a request to appear for an on-the-record interview on September 28, 2005, pursuant to Procedural Rule 8210. In addition, on or about September 19, 2005, staff sent to Respondent Covington by first class mail and by certified mail a request pursuant to Rule 8210 to provide certain documents related to outside business activity. After Respondent Covington received the Rule 8210 requests, he contacted staff and indicated that he would not appear for the on-the-record interview and he would not completely respond to the requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

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

A bar from association with any NASD member in any capacity.

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 us to submit it.

15 June 2006
Date

7/7/06
Herbert H. Covington III

Reviewed by:

Attorney

Accepted by NASD:

June 28, 2006
Date

Signed on behalf of the

Director of ODA, by delegated authority

Kevin G. Kulling
Kevin G. Kulling
Regional Counsel
NASD Department of Enforcement
55 W. Monroe St., Suite 2700
Chicago, IL 60603
(312) 899-4348

NASD District Director

Carlotta A. Romano

**Senior Vice President and
Regional Director**

NASD, District 8

55 W. Monroe St., Suite 2700

Chicago, IL 60603

(312) 899-4324