

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E8A2004095002

TO: Department of Enforcement
NASD

RE: Gregory, Zent & Swanson, Inc.
(CRD No. 22590)

Pursuant to Rule 9216 of NASD Code of Procedure, Gregory, Zent & Swanson, Inc. ("Member") 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 the Member alleging violations based on the same factual findings.

The Member 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 the Member; and,
3. If accepted:
 - a. this AWC will become part of the Member's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the Member'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. the Member 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 the Member's testimonial obligations or right to take legal or factual

positions in litigation or other legal proceedings in which NASD is not a party.

The Member 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:

Gregory, Zent & Swanson, Inc. became a member of NASD on October 5, 1988, and became registered with the Securities and Exchange Commission ("SEC") on September 15, 1988. The Member conducts a general securities business on a fully disclosed basis. The Member's membership with NASD and registration with the SEC remain currently in effect. At the time of the events in this matter, the Member had no history of disciplinary action.

I.

WAIVER OF PROCEDURAL RIGHTS

The Member 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 it;
- 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, the Member 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.

The Member 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. The Member 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:

**Failure of the Member to Retain a
Discretionary Account Agreement for a Customer in Violation of
SEC Rule 17a-4 and NASD Conduct Rules 2110 and 3110.**

1. NASD Conduct Rule 2510 (b) prohibits a member firm from allowing a representative to exercise any discretionary power in a customer's account unless the customer has given prior written authorization to the representative and the account has been accepted by the member as evidenced in writing by the member. NASD Conduct Rule 3110(c) (3) requires that for discretionary account, members shall obtain the signature of each person authorized to exercise discretion in the account and record the date such discretion was granted. SEC Rules 17a-3(a)(17)(ii) and 17a-4(e)(5) require that members obtain and retain, among other things, a document containing the dated signature of customers or owners of discretionary accounts, which grant authorization to trade on a discretionary basis and the dated signature of the person to whom discretionary authorization is granted, for six years after the account is closed. NASD Rule 3110(a) requires that members make and preserve documents in conformity with SEC Rules 17a-3 and 17a-4.
2. From in or about June 2003 to in or about September 2004, RK maintained a discretionary individual retirement account with the Member, in which he granted discretionary authorization to place trades in the account to Michael D. McClellan ("McClellan"), a General Securities Representative of the Member. As part of opening the discretionary account, RK signed a discretionary authorization agreement with the Member.
3. Despite the requirement described in paragraph 1 above, the Member failed to retain a copy of the discretionary authorization agreement between RK, the Member and McClellan.

4. Such acts, practices and conduct constitute separate and distinct violations of SEC Rule 17a-4 and NASD Conduct Rules 2110 and 3110 by the Member.

**Failure of the Member to Retain a
Letter of Complaint Received From a Customer in Violation of
SEC Rule 17a-4 and NASD Conduct Rules 2110 and 3110.**

5. SEC Rules 17a-4(b)(1) and 17a-3(a)(18)(i) require that members preserve written customer complaints and a record of customer complaints that it receives for a period of three years, and that for the first two years the documents shall be maintained in an easily accessible place. NASD Rule 3110(a) requires that members make and preserve documents in conformity with SEC Rules 17a-3 and 17a-4.
6. On September 16, 2004, RK complained in writing about the manner that his securities account was traded by McClellan. RK sent his complaint letter by certified mail, return receipt requested, to McClellan's attention, at the Member's address. The letter was received and signed for by a non-registered agent for the Member on September 17, 2004. The non-registered agent gave it to McClellan or left it on his desk.
7. When the staff requested a copy of RK's written complaint in October 2004, the Member could not provide a copy, and had no record that RK's written complaint was ever received.
8. Such acts, practices and conduct constitute separate and distinct violations of SEC Rule 17a-4 and NASD Conduct Rules 2110 and 3110 by the Member.

**Failure of the Member to Supervise to Prevent the Violation of SEC and
NASD Rules in Violation of
NASD Conduct Rules 2110 and 3010**

9. In connection with the Member's failure to maintain a copy of RK's written complaint letter, during at least 2004, the Member failed to adequately and properly supervise unregistered associated persons, who were permitted to receive and direct the correspondence that was received by the Member, in that the Member permitted them to accept mail for representatives of the Member and failed to provide them sufficient training to enable them to properly: identify customer complaints, which related to securities activities; and forward complaints to the appropriate registered principals of the Member, so

that they could be properly reviewed, maintained and timely reported as required by NASD Rules.

10. Such acts, practice and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010 by the Member.

- B. The Member also consents to the imposition, at a maximum, of the sanctions of a censure and a fine of \$10,000.

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

III.

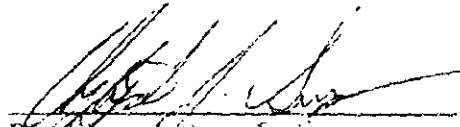
OTHER MATTERS

- A. The Member 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. The Member also 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. The Member 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 Election of Payment forms showing the method by which it proposes to pay any fine imposed.
- C. The Member 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.

The Member certifies that a duly authorized officer of the Member 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 the Member to submit it.

Gregory, Zent & Swanson, Inc.

Date


By Gregory, Zent & Swanson, Inc.
Its President

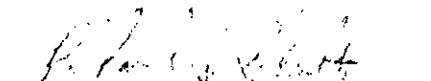
Reviewed by:

Counsel for Respondent

Accepted by NASD:

Date

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


Richard S. Schultz
Regional Counsel
NASD Department of Enforcement
55 West Monroe Street, Suite 2700
Chicago, Illinois 60603-5052
(312)899-4330

NASD District Director

Carlotta A. Romano
Senior Vice President and Regional Director
NASD, District 8
55 West Monroe Street, Suite 2700
Chicago, Illinois 60603-5052