

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0301180001

RECEIVED
2006 FEB 27
MEMPHIS
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TO: Department of Enforcement
NASD

RE: Carl Van der Merwe, Respondent
Municipal Securities Principal, Municipal Securities Representative & Corporate
Securities Representative
CRD No. 2561896

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,

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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:

Carl Van der Merwe ("Van der Merwe") entered the securities industry in approximately July of 1994 when he joined R.W. Smith & Associates, Inc. ("R.W. Smith" or the "Firm") as a trading assistant. Van der Merwe obtained his municipal securities representative's license in December of 1994, and he was first registered as a municipal securities representative with R.W. Smith in March 1995. Van der Merwe worked at R.W. Smith until April 2002, except for a six-month period in 1995.

After leaving R.W. Smith, Van der Merwe joined another member firm where he was registered as a municipal securities principal, a municipal securities representative, and as a corporate securities representative. He left that firm in September 2005. Van der Merwe is not currently registered with an NASD member firm. Pursuant to Article V, Section 4 of the NASD By-Laws, NASD retains jurisdiction over him. He has no prior relevant disciplinary history.

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 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. Summary

During the period January 2001 through December 2001 (the "relevant period"), while working as a municipal securities broker at R.W. Smith, Van der Merwe violated Municipal Securities Rulemaking Board ("MSRB") rules by misappropriating approximately \$29,000 from R.W. Smith, creating false and inaccurate books and records by falsifying expense reports reflecting at least \$96,000 in personal and duplicate expenditures as legitimate business expenditures, and providing violative gifts and gratuities worth approximately \$5,200 to municipal bond traders and other employees of municipal securities broker-dealer firms with whom he conducted business. Van der Merwe therefore violated MSRB Rules G-8, G-17, and G-20.

2. Van der Merwe Misappropriated Money from R.W. Smith

During the relevant period, Van der Merwe sought reimbursement for at least \$96,000 in personal expenses or duplicate expenses for which he had previously been reimbursed. These expenses were identified falsely on expense reports as genuine business gift and entertainment expenditures when they were Van der Merwe's personal expenses.

For example, during the relevant period, Van der Merwe sought and received reimbursement for the following personal or duplicate expenses:

- Household furnishings valued at over \$42,300, including bedroom and living room furniture, portraits of his children, window treatments, and a wine rack and shelves;

- Grocery items valued at over \$11,400, including cookies, Popsicles, Jello, wine, as well as other food items;
- Athletic and entertainment products valued at over \$10,500, including a Corner Home Gym, free weights, soccer equipment, a digital camera and accessories, a camcorder, DVDs, and video game systems and games;
- Clothing valued at over \$5,800, including children's clothing from Disneyland, women's athletic wear, and women's hosiery and undergarments; and
- Children's toys and educational products valued at over \$3,900, including a toy train set, Crayola products, and a toy medical set.

Van der Merwe had an agreement with the firm in which he was responsible for a portion of the cost of his business gift and entertainment expenses at a ratio roughly equal to his commission payout rate. R.W. Smith paid the balance to Van der Merwe. Therefore, as a result of submitting falsified expense reports for \$96,000 worth of personal and duplicate expenses, Van der Merwe misappropriated approximately \$29,000 from R.W. Smith as reimbursement for his personal expenses.

By virtue of the foregoing conduct, Van der Merwe violated MSRB Rule G-17.¹

3. Van der Merwe Intentionally Created and Submitted False Expense Reports

In connection with the misappropriation described above, Van der Merwe submitted 17 expense reports containing 145 entries that were described as genuine business expenses when they were, in fact, personal or duplicate expenses. Van der Merwe falsely identified a business associate as the recipient of the gifts or entertainment, represented the gift as a business gift, and listed a business purpose for the gift or entertainment.

For example, on four separate occasions, Van der Merwe created and submitted false expense reports to make it appear as though he gave multiple wedding gifts to one trading assistant. The purported gift items, valued at over \$16,600, included a digital camera, video games, furniture, cookware, and paintings. These entries on his expense reports were false because Van der Merwe never gave the items to the trading assistant; the items were not gifts given to a business associate; and since he purchased the items for personal use, Van der Merwe had no legitimate business purpose for seeking reimbursement.

¹ MSRB Rule G-17 provides:

In the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

Van der Merwe also created and submitted false expense reports to disguise duplicate expenses for which he had previously received reimbursement. For example, shortly after submitting an expense report for one of the purported wedding gifts to the trading assistant, Van der Merwe sought reimbursement for the same items a second time, this time listing the items, paintings valued at over \$1,600, as a house gift for another trader, and he wrote a business purpose for the gift. This entry was false because Van der Merwe never gave the paintings to the trader; the paintings were not gifts given to a business associate; and since he purchased the paintings for personal use, Van der Merwe had no legitimate business purpose for seeking reimbursement.

By creating and submitting false expense reports for reimbursement, Van der Merwe created inaccurate books and records regarding his business gift and entertainment expenses. By virtue of the foregoing conduct, Van der Merwe violated MSRB Rules G-8 and G-17.²

4. Van der Merwe Gave Gifts and Gratuities in Violation of MSRB Rules

During the relevant period, Van der Merwe provided illegal gifts and gratuities worth approximately \$5,200 to municipal bond traders and other employees of municipal securities broker-dealer firms with whom he conducted business. This conduct violated MSRB Rule G-20(a) because Van der Merwe gave each recipient more than \$100 in gifts annually. For example, during the relevant period, Van der Merwe:

- Provided over \$2,400 in gifts and gratuities to one bond trader, including approximately \$1,200 in cash given to the trader and his wife to use for gambling during a trip to Las Vegas, Nevada;
- Provided over \$1,100 in gifts and gratuities to another bond trader, including a gift of clothing valued at approximately \$290; and
- Provided over \$710 in gifts and gratuities to a trading assistant, including a gift of an X-Box video game system worth approximately \$400.

By virtue of the foregoing, Van der Merwe violated MSRB Rule G-20 and MSRB

² MSRB Rule G-8 provides:

(a) *Description of Books and Records to be Made.* Except as otherwise specifically indicated in this rule, every broker, dealer and municipal shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

....

(xvii) *Records Concerning Compliance with Rule G-20.* Each broker, dealer and municipal securities dealer shall maintain: (i) a separate record of any gift or gratuity referred to in rule G-20(a); and (ii) all agreements referred to in rule G-20(c) and all compensation paid as a result of those agreements.

Rule G-17.³

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

A bar from associating with any member firm 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

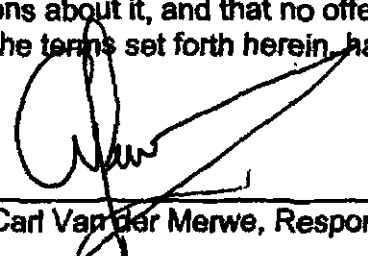
I understand that if I am barred or suspended from associating with any NASD member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any NASD member in any capacity,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

³ In pertinent part, MSRB Rule G-20 provides:

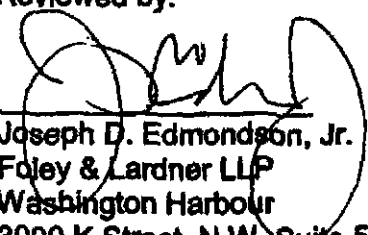
(a) **Limitation on Value.** No broker, dealer or municipal securities dealer shall, directly or indirectly, give or permit to be given any thing or service of value, including gratuities, in excess of \$100 per year to a person other than an employee or partner of such broker, dealer or municipal securities dealer, if such payments or services are in relation to the municipal securities activities of the employer of the recipient of the payment or service. . .

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.

1/20/06
Date

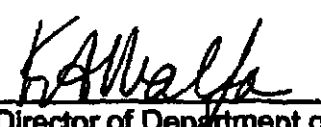

Carl Van der Merwe, Respondent

Reviewed by:


Joseph D. Edmondson, Jr.
Foley & Lardner LLP
Washington Harbour
3000 K Street, N.W. Suite 500
Washington, DC 20007-5101

Accepted by NASD:

Date

 1/27/06
Director of Department of Enforcement
Signed on behalf of the Director of
ODA, by delegated authority