

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF040073 0002

TO: Department of Enforcement
NASD

RE: Donna M. Vogt, Respondent
Registered Principal
CRD No. 1391717

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 or arising out of examination No. EAF040073 or any other examination concerning me, including E8A030630, E8A040860 and 20060052653.

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:

Donna M. Vogt ("Vogt") entered the securities industry in July 1985 as a General Securities Representative of a member of NASD. Vogt was registered with Raymond James Financial Services, Inc. ("Member") as a General Securities Principal between January 1999 and June 2003, and as a Municipal Fund Securities Principal during June 2003. Vogt was registered in the same capacities with another NASD member between August 2003 and May 2006. Vogt is not currently registered with any NASD member.

Vogt has a disciplinary history. On May 3, 2006, the State of Wisconsin revoked her securities agent license, pursuant to a Consent Order of Revocation. In its Petition for Order, the staff of the Wisconsin Division of Securities alleged that Vogt made unsuitable recommendations to certain customers, engaged in a dishonest or unethical business practice, filed a false or misleading statement with the Division of Securities, and engaged in a course of business that operated as a fraud or deceit upon her customers by repeatedly mischaracterizing or omitting facts in order to push the customers in a particular investment direction. Vogt consented to issuance of the Order, but did not admit the allegations made in the staff's Petition for Order.

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 but 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:

Failure to Differentiate Between Customers and Unsuitable Recommendations

During the time that Vogt was registered with the Member, she failed to make reasonable efforts to assess the specific financial situation, needs, and investment objectives of each customer. Instead, Vogt treated the majority of her customers in unison. Of the 729 account forms for Vogt's customers – which she signed off on as both the account representative and the approving principal – 95% identified “growth” as the primary investment objective and 91% identified “medium” as the risk tolerance, even though the customers varied greatly with respect to their age, financial status, financial needs and investment experience.

Because Vogt opened new accounts and accepted them on behalf of the Member, Vogt's homogenous treatment of her customers was not detected by the Member. As a consequence, Vogt was able to treat her customer base as one when recommending investments. For example, from September 2002 through March 2003, in the more than 100 customers' securities accounts that showed trading activity during that period, 85%-95% of all dollars invested were in variable annuities.

As further described below, during the time Vogt was registered with the Member

she recommended and effected transactions in the accounts of five customers that were unsuitable, in that they resulted in undue concentrations in aggressive growth mutual funds and variable annuities, while these customers were elderly, retired or intending to retire in the near future.

Vogt recommended to an 84 year old customer, who had net worth of less than \$100,000, that she invest a substantial portion of the equity in her account in growth mutual funds. One of those funds, the Grand Prix Fund, an aggressive, highly speculative fund, was described by Vogt as a "momentum" fund. Vogt recommended and effected purchases of shares of the Grand Prix Fund that ultimately resulted in a concentration equal to 80% of this customer's account net worth. The customer's account sustained losses of over 60% by June 2003.

Vogt recommended to another customer who was 84 years old that she invest almost 50% of her total account value in the Grand Prix Fund. The overconcentration was unsuitable for this elderly customer, who lost over 75% of her account equity, or 45% of her recorded net worth.

A 51 year old customer who was retired with annual income of less than \$50,000, was persuaded by Vogt to invest in the Grand Prix Fund and three other aggressive growth mutual funds. Her account eventually had a 99% concentration in aggressive growth mutual funds, which was unsuitable for her. This customer lost nearly \$15,000 in one year, prior to her decision to transfer her account to another broker-dealer.

Vogt recommended to a 63 year old customer that he purchase variable annuities for his tax-qualified retirement account (IRA). The two variable annuities Vogt recommended and purchased constituted 97% of the customer's liquid net, approximately \$310,000. The customer had explained to Vogt that he intended to retire soon, and that his only source of income following retirement, other than social security, would be withdrawals from his IRA account. Vogt's recommendation that the customer invest almost his entire account in variable annuities was unsuitable because it placed limitations on the liquidity he desired. Three years later, Vogt recommended that he replace the two variable annuities with a new variable annuity and two growth mutual funds. The customer incurred over \$57,000 in losses and fees as a result of these transactions, due to surrender charges, and losses in the variable annuity sub-accounts.

Another customer transferred her IRA account to RJFS and Vogt in October 2000 when she was 50 years old. At that time the customer had just over \$1 million in her account, diversified among stocks, bonds, mutual funds and unit investment trusts. Over time, Vogt recommended that this customer liquidate her prior

investments to purchase aggressive growth mutual funds, including the Grand Prix Fund, and variable annuities with sub-account allocations to growth funds. In March 2003, Vogt recommended that this customer liquidate all of her mutual fund holdings and invest her entire IRA account in variable annuities. By June 2003, the value of this customer's account had declined by over \$550,000. Vogt's recommendations were unsuitable because the account was overly concentrated at first in aggressive growth funds and variable annuities with growth fund sub-accounts, and then later because the account was 100% invested in variable annuities, which limited the customer's access to her funds. Such acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2310.

Home Equity Loans

Between approximately January 2001 and June 2003, Vogt recommended to at least 10 public customers that they obtain home equity loans and use the proceeds to purchase securities, without considering whether such recommendations were appropriate for such customers in light of their financial situation and needs. Moreover, a number of these individuals were nearing retirement and would have no source of income with which to repay the home equity loans. Such acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2310.

Violating NASD Rules Regarding Correspondence and Sales Literature

Vogt sent sales literature to customers regarding mutual funds without first submitting it to NASD Advertising Regulation, in violation of NASD Rule 2210(c)(2).

Vogt sent letters to customers recommending that they borrow against their home equity for the purpose of investing in new securities or staying invested in securities already owned in their IRAs. However, the letters failed to explain this as the use of leverage, omitted the risks of the proposed investments, and omitted the risks of this strategy, especially the risk that the investments could underperform or lose value and cause the homes to have to be sold. These were omissions of material information in violation of Rule 2210(d)(1)(A). Moreover, in recommending that customers borrow on their home equity for their income needs rather than take IRA distributions, Vogt stated in one such letter that the cost of the borrowing would be 6% and compared this to potential market gains by citing an extremely short, 4-week market gain of "20% to 25%." The letter stated: "When comparing the amounts to be gained by a 20% growth in your security values to borrowing from your home equity at 6% (or ½% monthly), we see that the more financially advisable course is to borrow at the low rates offered now." These references were highly promissory, in violation of Rule 2210(d)(1)(B). In addition, the letter referred to this leveraging strategy as "cheap

money,” which was highly misleading and also violated the Rule.

Vogt sent letters to at least two customer households advising them of the recent superior performance of growth funds she had previously recommended that they purchase. In one of the letters, she calculated that the customers would have more than doubled their money had they followed her advice. However, the performance she cited covered extremely short periods (6 months in one letter and 3 months in another), when long-term historical performance should have been provided for context and balance. Further, the short time periods she referred to were part of a historically superior market performance period during which many growth funds performed well. This information was necessary for a fair and balanced presentation, and its omission violated NASD Rule 2210(d)(1)(A).

Vogt sent a letter to a customer which discussed at length the potential benefits of a recommended variable annuity investment but was not fair and balanced because it failed to disclose the investment risks of the recommended sub-accounts, annuity surrender charges, early withdrawal penalties, fees and expenses, costs of benefit riders, and the operation of the living benefit rider. These omissions violated NASD Rule 2210(d)(1)(A).

Vogt mailed “Retirement Planner” reports to customers that assumed a couple aged 70 and 72 would live to 100 and 95, respectively, and projected investment returns of 12% per year for the 30 and 23-year periods. Both the mortality and the investment-return assumptions were unrealistically high, without a basis, and therefore misleading, in violation of Rule 2210(d)(1)(B).

Such acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2210.

Misrepresentations to Customers and Other Misconduct

In response to a customer’s telephone request to close his account, Vogt sent a letter to the customer that stated: “The law requires that I, your representative, must speak with you to close your account...I will assume that you have decided against closing your account unless I hear from you.” Vogt’s assertion that the law required her to speak with the customer before closing his account was false and misleading, in violation of NASD Rules 2210(d)(1)(B) and 2110. Ultimately, the customer abandoned his request.

On at least one occasion, Vogt refused to place a sale order at the request of a customer who was one of two joint account holders, until both account holders signed a document acknowledging that the sale was against Vogt’s advice. The customer wanted to liquidate holdings in the Grand Prix Fund and a Van Kampen

growth fund. Among other things, the letter from Vogt stated, "I understand that by selling at this lowest level in the general stock markets in more than 2 ½ years, I would be doing irreversible harm to these assets;" and "I understand that I can purchase put options that would hedge my portfolio if I am concerned of a further substantial drop in value;" and "I understand that timing the market even by the best professionals does not help a portfolio over the long term. It may work for 1 to 2 quarters, but it does not over the years. Donna has advised against selling this fund." Ultimately, both account owners signed the document, however, the liquidations were delayed for two weeks.

On another occasion, upon learning that a married couple planned to transfer their assets to another broker-dealer, Vogt met with them in person and argued with them until they acquiesced and told her they would not transfer their account. The customers later decided to proceed with the transfer. When Vogt discovered that the transfer had been initiated, she sent a letter to the customers in which she stated that their new broker had "virtually no experience," claiming that he had received his securities license earlier that year. The statement was not accurate (the new broker had several years of experience).

The above acts, practices and conduct constitute separate and distinct violations of just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

- B. I consent to the imposition, at a maximum, of the sanction of a bar from association with any member of the NASD in any capacity.

The sanction 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.

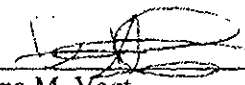
OTHER MATTERS

- 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.

1-18-07
Date


Donna M. Vogt
Registered Principal

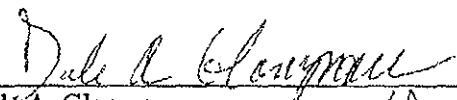
Reviewed by:

Gregory T. Everts, Esq.
Counsel for Respondent

Accepted by NASD:

2-21-07
Date

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


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