

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0401240001

TO: Department of Enforcement
NASD

RE: AFSG Securities Corp.
CRD No. 18374

Pursuant to Rule 9216 of NASD Code of Procedure, respondent 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 upon the condition that, if accepted, NASD will not bring any future actions against respondent alleging violations based upon the same *factual findings*.

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

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

WAIVER OF PROCEDURAL RIGHTS

Respondent 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 respondent;
- 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 ("SEC") and a U.S. Court of Appeals.

Further, respondent 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.

Respondent 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. Respondent 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 upon 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:

Summary

Between July 1, 2003 and June 30, 2004, respondent AFSG Securities Corp. ("AFSG" or "the firm"), distributed 31 pieces of institutional sales material relating to variable annuities that

failed to comply with NASD's content standards for institutional sales material, in violation of NASD Conduct Rules 2211, 2210, and 2110.

NASD Conduct Rule 2211

NASD Conduct Rule 2211 requires that all institutional sales material and correspondence comply with the content standards of NASD Conduct Rule 2210(d)(1) and with any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board. This requirement applies to all sales material and correspondence distributed to NASD members or registered associated persons of such members, and not for direct use with the public.¹ Like communications with the public, institutional sales material and correspondence must be fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service.² No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.³ In addition, no member may make any false, exaggerated, unwarranted or misleading statement or claim in any institutional sales material or correspondence.⁴

AFSG's Failure to Comply with NASD Conduct Rules 2211, 2210(d)(1)(A), and 2110

Between July 1, 2003 and June 30, 2004, AFSG distributed 31 pieces of institutional sales material relating to variable annuities that contained 48 violations of Rules 2211, 2210, and 2110. These pieces of institutional sales material were distributed to numerous other broker-dealers, banks, and wholesalers.

The firm distributed 24 pieces of institutional sales material which omitted material information. Among the material information omitted were:

- risks of investing in variable annuities, such as potential loss of principal;
- risks and limitations of certain benefits, such as age limitations and waiting periods;
- fees and charges associated with optional riders;
- existence of surrender charges;
- guarantees on insurance benefits are subject to claims-paying ability of issuing insurance company; and
- the basis of returns.

¹ NASD Conduct Rule 2211(a)(3)(E).

² NASD Conduct Rule 2211(d)(1), incorporating the content standards of Rule 2210(d)(1)(A).

³ Id.

⁴ NASD Conduct Rule 2211(d)(1), incorporating the content standards of Rule 2210(d)(1)(B).

Fourteen communications included misleading, unwarranted or promissory statements or claims, including:

- “Build Wealth, Insure Assets, Guarantee Income” despite comments on similar retail communications by NASD Advertising Regulation;
- misleading graphs which failed to include complete assumptions when comparing withdrawals from a mutual fund with annuitization of a variable annuity;
- misleading claim that a variable annuity is “no load” when, in actuality, there are a number of fees and expenses associated with the product; and
- misleading statements based upon outdated information – for example, outdated performance returns underlying the portfolio and outdated average annual returns for a particular subaccount.

Four of these fourteen communications were pieces to be used in bank branches as part of the firm’s Sign On Annuity Referral Program. These pieces described variable and fixed annuities, explained how to identify target customers, and suggested ways for bank tellers to refer customers to registered representatives in bank branches for more information about AFSG’s annuity products. These four pieces included suggestions for bank tellers to use misleading, unwarranted, or promissory statements in referrals, such as:

- placing a loaf of Wonder Bread® near the teller windows and telling customers who asked about it, “Ever wonder how your bread could be making more dough?” and,
- handing out bags of M&M’s® and after the customer offers thanks, saying, “Around here, M&M stands for More Money. And that’s what [name], a financial professional who is a licensed agent, can discuss with you. Would you like to meet with [him/her] today?”

Lastly, eight communications failed to include data for the most recent calendar quarter and standardized performance disclosures, as required by NASD Conduct Rule 2211(e) and Rule 34b-1 of the Investment Company Act of 1940.

All of the above-described content violations in these 31 pieces of institutional sales material constitute violations of NASD Conduct Rules 2211, 2210(d)(1)(A) and 2110.

B. Sanctions

Respondent also consents to the imposition, at a maximum, of the following sanctions:

1. A censure;
2. A fine of \$110,000.

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

III.

OTHER MATTERS

- A. Respondent 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. Respondent 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. Respondent agrees to pay any monetary sanctions imposed within 10 days of notice that this AWC has been accepted and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. Respondent 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.

Respondent certifies that it 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 respondent to submit it.

10-10-05
Date

Lisa A. Wachendorf
AFSG Securities Corp.
Respondent

By: Lisa A. Wachendorf, VP & CCO
[Name and title]

Reviewed by:

Peter J. Anderson
Peter J. Anderson
Cheryl Haas-Goldstein
Sutherland Asbill & Brennan
Counsel for Respondent

Accepted by NASD:

10/24/05
Date



James S. Shorris
Senior Vice President & Deputy
Enforcement

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